

EXHIBIT 6

ZOE LOFREN, CALIFORNIA
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COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

August 31, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL DONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCALL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7108

CONFIDENTIAL

Representative Maxine Waters
2344 Rayburn House Office Building
Washington, DC 20515

Re: In the Matter of Representative Maxine Waters

Dear Colleague:

It appears that you have violated, and are currently in continuing violation of, your confidentiality obligations under both the Rules of the Committee on Standards of Official Conduct (Standards Committee) and the confidentiality agreement (Confidentiality Agreement) you signed on May 28, 2010.

Standards Committee Rule 26(c) provides that:

Not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a Statement of Alleged Violation, the subcommittee shall provide the respondent with a copy of the Statement Alleged Violation it intends to adopt, together with all evidence it intends to use to prove those charges it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence[.]

However, Standards Committee Rule 26(f) limits the disclosure of materials to a respondent by stating:

Evidence provided pursuant to paragraph (c) . . . shall be made available to the respondent and respondent's counsel only after each agrees, in writing, that no documents, information, or other materials obtained pursuant to that paragraph shall be made public until - (1) such time as a Statement of Alleged Violation is made public by the Committee if the respondent has waived the adjudicatory hearing; or (2) the commencement of an adjudicatory hearing if respondent has not waived an adjudicatory hearing[.]

In accordance with Standards Committee Rule 26(f), you and your counsel signed the Confidentiality Agreement on May 28, 2010.

Section 1 of the Confidentiality Agreement defined "Confidential Information" as:

{A}ll Evidence made available to Respondent and/ or to Respondent's Counsel, together with any and all information, facts, conclusions, or inferences in any way based on, drawn, derived, or stemming from, or related to the Evidence, whether oral, written, electronic, or in any other medium, including, but not limited to, memoranda, reports, summaries, other documents, or emails. 'Confidential Information' shall also include any and all Evidence provided to Respondent and/ or Respondent's Counsel after the date hereof, whether pursuant to Committee Rules 25 or 26(e) or otherwise.

Section 2 of the Confidentiality Agreement required that you and your counsel would:

[M]aintain the confidentiality of the Confidential Information and not disclose it in any way, shape or form to anyone other than Respondent and/or Respondent's Counsel unless such person or persons is/are subject to this Confidentiality Agreement or to an agreement providing the same or substantially similar protection to the Confidential Information ("Other Confidentiality Agreements"), until the Disclosure Date set forth in Section 3 below."

Section 3 of the Confidentiality Agreement defined the Disclosure Date before which you could not disclose Confidential Information as "the commencement of an adjudicatory hearing" unless you "waived an adjudicatory hearing." This provision is consistent with Standards Committee Rule 26(f).

According to Section 5 of the Confidentiality Agreement, the limitations on disclosure in the agreement do not apply, "to such portions of the Confidential Information that were in the possession of the Respondent and/or Respondent's Counsel prior to the date hereof and which were not acquired or obtained from the Investigative Subcommittee or the Committee." However, Section 5 of the Confidentiality Agreement further stated that before you disclosed any such information, you agreed "to notify the Committee in writing at least five (5) days prior to any disclosure and, with that notice, to provide evidence of his or their possession of such information prior to the date hereof."

Under Section 7 of the Confidentiality Agreement you acknowledged and agreed that if you "violated this Confidentiality Agreement, the Investigative Subcommittee may avail itself of any remedy provided in the Committee Rules, including, but not limited to, Committee Rules 19(e)(3) and 26(m)."

On May 28, 2010, after you and your counsel signed the Confidentiality Agreement, the Investigative subcommittee provided you and your counsel with a copy of the Statement Alleged Violation it intended to adopt, together with all evidence it intended to use to prove those charges it intended to adopt, including documentary evidence and witness testimony.

On June 15, 2010, the investigative subcommittee adopted a Statement of Alleged Violation and forwarded the Statement of Alleged Violation to you and reiterated that the "non-disclosure agreements are still in effect," and that you "remain[ed] bound by their terms."

On June 22, 2010, the investigative subcommittee provided you with a supplemental disclosure of evidence and again reiterated that the "non-disclosure agreements are still in effect" and that you "remain[ed] bound by their terms."

You have not waived your right to an adjudicatory hearing, and an adjudicatory hearing has not yet commenced. However, it appears that by at least August 13, 2010, you disclosed confidential information that was subject to the Confidentiality Agreement in clear violation of your confidentiality obligations under both the Standards Committee Rules and the Confidentiality Agreement.

On August 13, 2010, you held a press conference in which you disclosed confidential information, including excerpts of approximately twenty-four (24) documents and approximately four (4) interview transcripts, that was subject to the Confidentiality Agreement. Moreover, on that same date, your web site (<http://waters.house.gov/>) provided a link to a copy of a presentation that contained the confidential information you disclosed at the press conference and that was subject to the Confidentiality Agreement.¹

In addition to this public disclosure of confidential information that is subject to the Confidentiality Agreement, contemporaneous newspaper articles suggest that additional disclosures may have been made. For example, an August 13, 2010, article in *The Hill*, stated that "[t]hroughout the week, Waters's chief of staff Mikael Moore has provided background to reporters about a trail of e-mail between himself and officials of the bank, OneUnited, which the ethics committee cites as proof that Waters was helping the bank get TARP funds." Moreover, an August 13, 2010, article in *The Washington Post*, described in detail "[s]everal documents released by Waters[.]"

Finally, the Standards Committee has been contacted by a witness, whose executive session transcript was provided to you and was subject to the Confidentiality Agreement, who stated that an investigative reporter has contacted the witness suggesting that the investigative reporter is in possession of the witness' entire executive session transcript. The Committee had not provided the transcript to any other person, including the witness.

¹ Even if some of those documents were in your possession before you received them from the investigative subcommittee, you did not provide the Committee with any notice that you intended to disclose the confidential information that was subject to the Confidentiality Agreement.

Representative Maxine Waters
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It is possible, if not likely, that much of this information will ultimately be publicly disclosed during the adjudicatory subcommittee process. The process provides that the Statement of Alleged Violation is only a set of allegations, not an ultimate finding of a violation of applicable rules, which must be proved by clear and convincing evidence. During this process you will have an opportunity to present your view of the allegations.

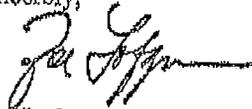
However, disclosure of confidential information outside the process in contravention of the rules and the Confidentiality Agreement may interfere with the process, by impairing the ability of Committee staff to present a case and infringing on the confidentiality rights and obligations of other parties, for example. In addition, it could create a perception that the impartiality of the adjudicatory subcommittee members - who have not had access to the evidence in this matter, and will not until an adjudicatory hearing begins - has been influenced by exposing them to evidence in the case.

It appears that your public disclosures were in violation of your confidentiality obligations under both the Standards Committee's Rules and the Confidentiality Agreement.

Accordingly, the Committee advises you that you should honor the terms of the Confidentiality Agreement so long as it remains in force. You should refrain from any future public statements which are not in accord with its confidentiality requirements. To the extent that you have shared confidential information with any parties who may not possess such information under the Standards Committee Rules and the Confidentiality Agreement, you should instruct those sources to destroy any confidential information you have shared with them.

If you or your counsel have any questions about the scope and limitations of the confidentiality provisions of the Standards Committee Rules and/or the Confidentiality Agreement, please contact Blake Chisam, Chief Counsel for the Committee.

Sincerely,



Zoe Lofgren
Chair

cc: Stan Brand, Esq.

EXHIBIT 7

BRAND LAW GROUP

A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-8700
TELECOPIER: (202) 737-7666

August 25, 2010

VIA E-MAIL & FIRST CLASS MAIL

Representative Zoe Lofgren, Chairwoman
Representative Jo Bonner, Ranking Member
House Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, DC 20515

Re: In the Matter of Representative Maxine Waters

Dear Chairwoman Lofgren and Ranking Member Bonner:

We are writing to you on behalf of our client Representative Maxine Waters to express our concerns about the full Committee's decision to continue its investigation subsequent to the Investigative Subcommittee's transmittal of its Statement of Alleged Violation ("SAV"). Such inquiry violates both this Committee's rules and comparable federal criminal procedures and raises significant questions about the sufficiency of the evidence that the Investigative Subcommittee relied upon when it issued the charges contained in its SAV. Most alarmingly, it calls into question the impartiality and good faith of the Investigative Subcommittee.

On August 17, 2010, Committee Deputy Chief Counsel C. Morgan Kim delivered a document request for additional documents from Rep. Waters' office. The Committee's request relates solely to matters addressed in the previously issued SAV. In the e-mail from Committee Counsel Sherla A. Clarke containing that request, Ms. Clarke indicated that the Committee would issue a subpoena for the requested materials if Rep. Waters did not voluntarily provide the documents. We have also recently learned that the Committee continues to contact and interview witnesses about this matter, including some of Rep. Waters' former staff members.

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Hon. Zoe Lofgren & Hon. Jo Bonner

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The Committee's decision to continue its investigation after transmittal of the SAV is a matter of great concern, both under this Committee's own rules and in light of long-standing comparable federal criminal practice and procedure. Rules 19(e) and (f) of the Committee on Standards of Official Conduct govern the Committee's conduct "upon completion of the inquiry." Under Rule 19(e), upon completion the staff is authorized to "draft for the investigative subcommittee a report that shall contain a comprehensive summary of the information received regarding the alleged violations." Rule 19(f) authorizes the investigative subcommittee, again "upon completion of the inquiry," to "adopt an [SAV], if it determines that there is substantial reason to believe that a violation . . . has occurred." Finally, Committee Rule 20 authorizes an investigative subcommittee to "amend its [SAV] anytime before the [SAV] is transmitted to the Committee."

Thus, Committee Rules 19 and 20 plainly establish that an investigative subcommittee must complete its investigation prior to the issuance of the SAV. Indeed, in writing Rule 20 the drafters clearly contemplated a situation where an investigative subcommittee acquires additional information requiring it to amend its SAV before transmission to the full Committee. What the rules do not authorize, however, is the post-issuance investigation that the Committee is currently conducting in this matter.

The Committee's rules are consistent, and indeed appear to be based upon, the proposition under federal rules that "[o]nce a defendant has been indicted, the government is precluded from using the grand jury for the sole or dominant purpose of obtaining additional evidence" against her. *United States v. Moss*, 756 F.2d 329, 332 (4th Cir. 1985) (quotations omitted).

As this Committee has acknowledged, its investigations take place within the "context of criminal prosecutions." See Investigative Subcommittee's Order on Motion for a Bill of Particulars and Memorandum in Support of Order (July 1, 2010) at 2 (denying Rep. Waters' Motion for a Bill of Particulars). Certainly, in that "context" the investigative subcommittee process is analogous to the grand jury stage of a criminal prosecution. As such, the Committee's continued investigation for the purpose of gathering evidence for adjudication of the charges contained in the SAV represents an abuse of the Committee's investigative process.

In sum, the Committee's continued investigation, conducted subsequent to the transmittal of its SAV, violates both the Committee's rules and established, comparable federal precedent. These activities are particularly worrisome given the alacrity displayed by the investigative Subcommittee in transmitting the SAV to this Committee. This rush to judgment (and subsequent efforts to bolster its case) casts doubt on the sufficiency of the investigation underlying the SAV. Even more troublesomely, it calls into question the impartiality and good faith of the Investigative Subcommittee.

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To wit, the Investigative Subcommittee issued its SAV on June 15, 2010. On June 30, Rep. Waters filed a Motion for a Bill of Particulars pursuant to Committee Rule 22(b), requesting "an explication of the definitions and standards which the Committee intends to utilize in order to assert any defenses available to her." Memorandum of Points and Authorities in Support of Motion for a Bill of Particulars at 3. Yet, *less than twenty-four hours later*, in derogation of House precedent cited by Rep. Waters compelling the granting of such a motion (*id.* at 2), the Investigative Subcommittee denied her Motion, holding that the SAV "contains information sufficient to advise Respondent of the allegations against her, and sufficient to afford her a meaningful opportunity to respond to those allegations." Order (July 1, 2010).

On July 12, pursuant to Committee Rule 22(c)(2), Rep. Waters filed a Motion to Dismiss the SAV and a sixteen-page Memorandum of Points of Authorities in support of the Motion. In denying that Motion *three days later*, the Investigative Subcommittee held that the SAV stated facts sufficient to constitute the alleged violations. See Order (July 15, 2010). It is also noteworthy that the Investigative Subcommittee denied Rep. Waters' requests for oral hearings on both Motions, describing her requests as "unnecessary" and stating that she had failed to raise any issues that presented a "close call." Memorandum in Support of Order (July 15, 2010) at 2 n.3. Finally, on July 28, the Investigative Subcommittee transmitted its SAV to the full Committee.

The Investigative Subcommittee's dismissive and hastily considered rejections of Rep. Waters' motions leading up to its transmittal of its SAV -- particularly in light of the Committee's continued factual investigation subsequent to that transmittal -- indicates that the Investigative Subcommittee's actions and motives were less than "unbiased and impartial." See Committee Rule 9(e). It is apparent that the Investigative Subcommittee rushed to transmit the SAV prior to the full House of Representatives recessing on July 30. Given that transmittal triggered publication of the charges against her, we must conclude that the Investigative Subcommittee's hasty action was improperly intended to pressure Rep. Waters into accepting a settlement of the charges prior to transmittal and publication or face the inevitable public and political damage that has resulted from such publication during the months preceding her primary and general elections; neither purpose is a valid motivation for a supposedly unbiased and impartial body.

The Committee's continued, post-transmittal investigation is a tacit acknowledgement that, despite the Investigative Subcommittee's rulings to the contrary, the evidence underlying the SAV is wholly insufficient to support the charges contained therein. Indeed, these actions indicate that the Investigative Subcommittee erred in denying both Rep. Waters' Motion for a Bill of Particulars and Motion to Dismiss.

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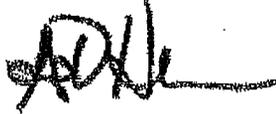
Hon. Zoe Lofgren & Hon. Jo Bonner

August 25, 2010

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Accordingly, Rep. Waters demands that the Committee cease its post-transmittal inquiry, which it is conducting in violation of both Committee rules and federal criminal procedure. The Committee should also note that Rep. Waters will oppose any attempt to use any evidence acquired post-transmittal of the SAV in an adjudicatory hearing on the charges contained in the SAV.

Sincerely,

A handwritten signature in black ink, appearing to be "SMB/ADH", with a long horizontal line extending to the right.

Stanley M. Brand
Andrew D. Herman

SMB/ADH

EXHIBIT 8

ZOE LOPGREN, CALIFORNIA
*CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE O'BIBAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS
U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, DC 20515-6328

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER
K. MICHAEL O'DONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCOUL, TEXAS
KRILEE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER
SUITE HT-2, THE CAPITOL
(202) 225-7103

August 31, 2010

Stanley M. Brand
Andrew D. Herman
Brand Law Group
923 Fifteenth Street, NW
Washington, DC 20005

Dear Messrs. Brand and Herman:

We are writing in response to your letter dated August 25, 2010, regarding the August 17, 2010, letter from the Committee's Deputy Chief Counsel, C. Morgan Kim, requesting your client's Chief of Staff, Mikael Moore, voluntarily provide certain documents in preparation for an adjudicatory hearing in the matter of Representative Maxine Waters.

As you are aware, the current adjudicatory hearing provisions of the Committee's rules have been used in only one matter since they were adopted following the Ethics Reform Act of 1989. Therefore, there is little precedent to look to for the interpretation of the Committee's adjudicatory hearing rules. With that in mind, our aim as we move forward in this matter is to act not only fairly, but also pragmatically.

Notwithstanding the assertions made in your August 25, 2010, letter, an adjudicatory hearing is a new and distinct phase in the disciplinary process. In the adjudicatory hearing phase, Committee counsel bears the burden of proving the allegations in the Statement of Alleged Violation and the burden of proof differs from that in the investigative phase. An adjudicatory hearing involves a fresh look at evidence offered by Committee counsel in support of the allegations charged in the Statement of Alleged Violation. Also, a respondent has the right to cross-examine witnesses and introduce evidence, including testimony, in her defense.

The Committee's rules contemplate that both Committee counsel and a respondent will have the opportunity to prepare their cases in advance of an adjudicatory hearing. For example, Committee Rule 23(f)(1) provides that Committee counsel must identify the evidence and witnesses they intend to offer at an adjudicatory hearing and that a respondent must be afforded the right to review the evidence and witness list at least 15 days before an adjudicatory hearing begins. Similarly, Committee Rule 23(g) provides that a respondent must provide notice of the witnesses the respondent intends to call and evidence the respondent intends to offer at least five days before the hearing. In this regard, Committee Rules 23(d) and 23(h) allow for the issuance of subpoenas to compel the production of documents and testimony that an investigative subcommittee did not acquire or that a respondent seeks to introduce. In addition, Rule 26(e)

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explains the process by which evidence that was not provided to the respondent by an investigative subcommittee may be used during an adjudicatory hearing.

As a practical matter, the parties – the respondent and Committee counsel – have both an obligation and a right to prepare their cases to ensure that the matter is as well presented as possible. The institution, the Committee, the respondent and the public deserve no less.

Thus, the assertion in your letter that Committee's rules preclude Committee counsel from seeking to introduce evidence beyond that presented to the investigative subcommittee is not supported by the rules or sound policy.

We believe it is important to note that you were provided materials that the investigative subcommittee intended to use to prove the counts of the Statement of Alleged Violation pursuant to Committee Rule 26(c) on May 28, 2010. You were, pursuant to Committee Rule 26(e), also provided additional materials that may be used to prove the allegations in the Statement of Alleged Violation on June 22, 2010, and August 9, 2010. Thus, you have been in possession of evidence that may be used to prove the allegations in the Statement of Alleged Violation for some time, and you have been on notice that any witness or other individual referenced in those documents may be a potential witness at the adjudicatory hearing.

Each of these disclosures of documents to you was subject to the non-disclosure agreement you and Representative Waters signed, as well as to Committee Rule 26(f). A separate communication regarding the concern the Committee has about Representative Waters' disclosure of information in violation of both the Committee rules and the signed non-disclosure agreement will be sent to Representative Waters by the Chair.

Your letter states that you intend to "oppose any attempt to use any evidence acquired post-transmittal of the SAV in an adjudicatory hearing on the charges contained in the SAV."

The Committee rules fully anticipate that an adjudicatory subcommittee will consider evidence beyond that considered by an investigative subcommittee. Under Committee Rule 23(i), Committee counsel may present any relevant evidence and such relevant evidence shall be admissible unless the evidence is privileged under the rules or precedents of the House of Representatives. Of course, you have the right to object to the admissibility of evidence at the adjudicatory hearing. As a practical matter it would be helpful to understand, at the earliest possible time, whether your specific objections will be based on either the relevance of evidence or on the grounds that such evidence is privileged under the rules or precedents of the House of Representatives so that the parties may focus their attention on evidence that is, in fact, admissible.

Finally, regarding your comments about criminal law precedents, we want to advise you that while the Committee does occasionally look to precedent from both the criminal and civil courts to aid in interpreting its rules, actions taken by Congressional Committees, including the

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Standards Committee or any of its subcommittees, are not criminal proceedings and the Committee is not bound by criminal precedent.

Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to contact Morgan Kim at (202) 225-7103.



Zoe Lofgren
Chair

Sincerely,



Jo Bonner
Ranking Republican Member

cc: The Honorable Maxine Waters
C. Morgan Kim, Deputy Chief Counsel
R. Blake Chisam, Staff Director and Chief Counsel

EXHIBIT 9

ZOE LOPGREN, CALIFORNIA
CHAIR
DEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY GASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
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DREGG HARPER, MISSISSIPPI
MICHAEL T. RUDCAU, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

ONE HUNDRED ELEVENTH CONGRESS
U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-8323

October 12, 2010

CONFIDENTIAL

Representative Maxine Waters
2344 Rayburn House Office Building
Washington, DC 20515

Re: In the Matter of Representative Maxine Waters

Dear Colleague:

As you are aware, an adjudicatory subcommittee of the Committee on Standards of Official Conduct (Committee) has been appointed in the above-referenced matter. The purpose of this letter is to inform you of the procedures applicable to proceedings before the adjudicatory subcommittee and to notify you of the expected schedule for those proceedings. In this regard, please find enclosed copies of:

1. The Committee's rules for the 111th Congress;
2. The Rules of the House of Representatives for the 111th Congress; and
3. The Statement of Alleged Violation in the above-referenced matter.

The purpose of an adjudicatory subcommittee is to "hold a hearing to determine whether any counts in the Statement of Alleged Violation have been proved by clear and convincing evidence and [to] make findings of fact, except where such violations have been admitted by respondent."¹ The hearing before the adjudicatory subcommittee is required to be open to the public and may only be closed, in whole or in part, by an affirmative vote of a majority of the adjudicatory subcommittee's members.² Any vote to close the hearing must be made in open session.³

The quorum required for the adjudicatory subcommittee to conduct "any business" is a majority plus one.⁴ Therefore, the required quorum to conduct any business in this matter will consist of six members.

¹ Committee Rule 23(c).

² House Rule XI, cl. 3(o)(2); Committee Rule 23(e).

³ House Rule XI, cl. 3(c)(2).

⁴ Committee Rules 23(b) and 9(b).

Committee Rule 26(b) permits you to seek to waive your right to an adjudicatory proceeding. Any such request must be made in writing and be signed by you.⁵ A request to waive your right to an adjudicatory hearing, or any part of such proceeding, would be subject to the acceptance of the adjudicatory subcommittee.⁶

The conduct of an adjudicatory hearing is governed generally by Committee Rule 23. In the absence of a waiver of a hearing, the adjudicatory subcommittee will proceed with a hearing pursuant to Committee Rule 23(e). The adjudicatory hearing will convene on Monday, November 29, 2010, at 9:00 a.m.

"At an adjudicatory hearing, the burden of proof rests on Committee counsel to establish the facts alleged in the Statement of Alleged Violation by clear and convincing evidence."⁷ Committee counsel may, subject to subcommittee approval, enter into stipulations with you or your counsel as to facts that are not in dispute.⁸ Committee counsel need not present any evidence regarding any fact stipulated or count that you admit.⁹ Since subcommittee approval is required for any stipulations, you and your counsel and Committee counsel must jointly submit any proposed stipulations to the adjudicatory subcommittee in writing by October 29, 2010.

At any adjudicatory hearing, the adjudicatory subcommittee "may require, by subpoena or otherwise, the attendance and testimony of such witnesses and production of such books, records, correspondence, memoranda, papers, documents, and other items as it deems necessary."¹⁰ The adjudicatory subcommittee may accept "[d]epositions, interrogatories, and sworn statements taken under any investigative subcommittee direction" into the record of the adjudicatory proceedings.¹¹

More generally, Committee Rule 23(i)(1) provides that "[a]ny relevant evidence shall be admissible," unless it is privileged.¹² The Chair of the subcommittee is responsible for ruling on any question of admissibility or relevance of evidence, motion, procedure, or any other matter at an adjudicatory hearing.¹³ A witness, witness counsel, or Member of the subcommittee may appeal any ruling to the Members present at that proceeding.¹⁴ A majority vote of the Members present at such proceeding on such an appeal shall govern the question of admissibility and no appeal shall lie to the Committee.¹⁵

⁵ Committee Rule 26(b).

⁶ *Id.*

⁷ Committee Rule 23(n).

⁸ Committee Rule 23(i)(4).

⁹ Committee Rule 23(n).

¹⁰ Committee Rule 23(d).

¹¹ *Id.*

¹² Committee Rule 23(i)(1). As provided in Committee Rule 23, the procedures set forth in House Rule XI, clause 2(g) and (k) apply to an adjudicatory hearing.

¹³ Committee Rule 23(i)(2).

¹⁴ *Id.*

¹⁵ *Id.*

You and your counsel have the right to review the evidence that Committee counsel intends to present at the adjudicatory hearing.¹⁶ Counsel will provide you a copy of these materials no later than **October 18, 2010**.

Pursuant to Committee Rule 23(l)(1), the parties¹⁷ may object to the admissibility of evidence only on the grounds of relevance or privilege under the precedents of the House.¹⁸ Any objections you may have to this evidence, including both exhibits and anticipated witness testimony, must be submitted in writing to the Chair of the adjudicatory subcommittee by **12:00 p.m. on October 29, 2010**. You should state the basis for any such objection as fully as possible. Objections not raised at that time will be waived.

Counsel for the Committee and counsel for the Respondent may prepare a joint exhibit list for those exhibits to which each party determines it has no objection.

If you intend to call witnesses as part of your case during the adjudicatory hearing, you must provide the adjudicatory subcommittee with a list of the witnesses you intend to call and summaries of those witnesses' expected testimony.¹⁹ You must also provide copies of any documents or other evidence you will seek to introduce at the adjudicatory hearing. The list of witnesses, summaries of expected testimony, and copies of documents or other evidence you will seek to use during the hearing must, therefore, be received by counsel no later than **November 9, 2010**. Any objections Committee counsel may have to this evidence, including both exhibits and anticipated witness testimony, must be submitted in writing to the Chair of the adjudicatory subcommittee by **November 15, 2010**.

The admissibility of testimony by any witness is subject to the requirements of Committee Rule 23(l)(1), which provides that any relevant evidence "shall be admissible unless the evidence is privileged under the precedents of the House of Representatives." The Chair will make her initial determination regarding the admissibility of testimony by any witness you may seek to call based on the summaries of their expected testimony and any material you provide pursuant to Committee Rule 23(g). You should, therefore, be as detailed, specific, and thorough as possible in any summaries you provide of your witnesses' expected testimony and related materials.

Pursuant to Committee Rule 23(h), you may apply to the adjudicatory subcommittee to issue subpoenas "for the appearance of witnesses or the production of evidence." Any application for a subpoena "shall be granted upon a showing by the respondent that the proposed testimony or evidence is relevant and not otherwise available to respondent." If you choose to apply to the adjudicatory subcommittee for the issuance of a subpoena or subpoenas, your

¹⁶ Committee Rule 23(f)(1).

¹⁷ The term "parties" refers to the respondent and Committee counsel.

¹⁸ The only privileges applicable to adjudicatory proceedings are those recognized under the precedents of the House. Please note that the applicable privileges do not include the Speech or Debate Privilege under Article I, section 6, clause 1 of the United States Constitution. The Speech or Debate Clause states that Senators and Representatives of the House "for any speech or debate in either House, they shall not be questioned in any other place." This privilege can only be asserted during inquiries conducted by an entity other than the legislative branch.

¹⁹ Committee Rule 23(g).

application should include a detailed, specific, and thorough summary of the expected testimony of any witnesses and the content and nature of any materials you seek to subpoena. The application for subpoenas "may be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative."²⁰ Any application by you for subpoenas must be submitted to the adjudicatory subcommittee by 12:00 p.m. on October 29, 2010. A subpoena to a witness to appear at a hearing must be served sufficiently in advance of that witness' scheduled appearance to allow the witness a reasonable time, as determined by the Chair, to prepare for the hearing and employ counsel.²¹ Any witnesses subpoenaed to testify must be served no later than November 22, 2010.

Prior to the start of the adjudicatory hearing, the adjudicatory subcommittee will meet with counsel for the Committee and counsel for the Respondent to address pre-hearing objections to evidence, stipulations proposed by the parties, and any other outstanding procedural issues. A pre-hearing conference, if necessary, will be held at 1:00 p.m. on November 18, 2010.

Following the pre-hearing conference, each party will be required to provide the Members of the adjudicatory subcommittee with a copy of the party's exhibits that will be admitted into the record. Each party must provide copy of its exhibits to each Member of the adjudicatory subcommittee no later than 5:00 p.m. on November 19, 2010.

The conduct of the adjudicatory hearing will proceed as set forth in Committee Rule 23(j). The Chair of the adjudicatory subcommittee will open the hearing.²² The Chair will then recognize Committee counsel and your counsel, in turn, for the purposes of allowing each party to make an opening statement.²³ Opening statements will be limited to 1 hour for each side.

Pursuant to Committee Rule 23(j)(3), "whenever possible," witness testimony and other pertinent evidence shall be presented by Committee counsel first, followed by presentation of testimony and other evidence by the respondent. The Chair may allow rebuttal witnesses.²⁴ Any witness called at the adjudicatory hearing will be examined first by the party calling the witness, followed by cross-examination by the opposing party.²⁵ The Chair has the discretion to allow redirect examination and recross examination.²⁶ Members of the adjudicatory subcommittee may then question the witness under the five-minute rule, unless otherwise directed by the Chair.²⁷

The Chair may, in her discretion, allow counsel for either side to describe or summarize evidence admitted in their case, other than the testimony of witnesses testifying in person at the hearing, and to respond to questioning from the members of the adjudicatory subcommittee regarding such evidence.

²⁰ Committee Rule 23(h).

²¹ Committee Rule 26(l).

²² Committee Rule 23(j)(1).

²³ Committee Rule 23(j)(2).

²⁴ Committee Rule 23(j)(3)(iii).

²⁵ Committee Rule 23(j)(4).

²⁶ *Id.*

²⁷ *Id.*

At the conclusion of the presentation of evidence, both sides will be allowed 1 hour for closing arguments.²⁸ Committee counsel will be permitted to reserve time for rebuttal argument.²⁹

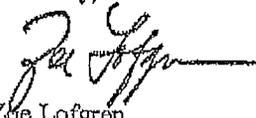
Committee counsel and your counsel will each be allowed 6 hours to present their respective cases, exclusive of the time allotted for opening and closing arguments. The 6 hour limitation on presentation of each side's case is subject to reconsideration based upon a reasonable request for additional time. Any objections regarding the procedure for the adjudicatory hearing must be submitted to the adjudicatory subcommittee in writing by October 15, 2010.

As soon as practicable after the parties' closing arguments, the adjudicatory subcommittee will meet to "consider each count contained in the Statement of Alleged Violation and shall determine by a majority vote of its members whether each count has been proved."³⁰ A count determined not to have been proved "shall be considered as dismissed by the subcommittee."³¹ The adjudicatory subcommittee must report its findings to the Committee.³²

The adjudicatory hearing will be conducted subject to the Rules of Decorum of the House.³³ Further, the Chair may require all participants to observe strictly and promptly all evidentiary, procedural or other rulings of the Chair and of the adjudicatory subcommittee. The adjudicatory subcommittee expects that any ruling it makes regarding the relevance of proffered evidence, or any line of questioning or argument will be promptly and strictly observed. Any breach of decorum by any of the participants is punishable by the Chair "by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt."³⁴

If you have any questions, please have your counsel contact the Committee's Staff Director and Chief Counsel, R. Blake Chisam, at (202) 225-7103.

Sincerely,



Zoe Lofgren
Chair

²⁸ Committee Rule 23(f)(5).

²⁹ *Id.*

³⁰ Committee Rules 23(o) and 10(a)(4).

³¹ *Id.*

³² *Id.*

³³ See House Rule XVII and related commentary.

³⁴ House Rule XI, clause 2(k)(4); Committee Rule 26(m).

Representative Maxine Waters
October 12, 2010
Page 6 of 6

cc: Representative Jo Bonner, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct
C. Morgan Kim, Deputy Chief Counsel, Committee on Standards of Official Conduct
Stanley M. Brand, Esq., Counsel for Respondent
Andrew D. Herman, Esq., Counsel for Respondent

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CHAIR

BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT

MJEL J. TAYLOR,
COUNSEL TO THE CHAIR

R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
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GREGG HARPER, MISSISSIPPI
MICHAEL T. McCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

October 13, 2010

The Honorable Maxine Waters
2344 Rayburn House Office Building
Washington, DC 20515

I Aryn Bussell (please print) certify that I have received a package from the
Committee on Standards of Official Conduct on October 13, 2010.

Aryn Bussell
Signature

10/13/10
Date

EXHIBIT 10

The Washington Post

Ethics probe of Rep. Waters derailed by infighting, sources say

By R. Jeffrey Smith and Carol D. Leonnig
Washington Post Staff Writers
Thursday, December 16, 2010; 11:01 PM

A lengthy House investigation of Rep. Maxine Waters (D-Calif.) has been derailed by infighting within the politically charged ethics committee over errors in building a case against her, according to congressional sources with direct knowledge of the probe.

The probe, opened in 2009, dissolved this fall and most likely will fall to a newly composed committee and possibly a new investigative staff, the sources said.

The case - one of the most prominent ethics investigations undertaken by the committee - came apart as committee and staff members argued over whether documents should be subpoenaed and when the trial should be scheduled and for how long. They all expected Waters to agree to a negotiated settlement, which she ultimately declined.

At one point, the committee's ranking Republican, Rep. Jo Bonner (Ala.), accused the chairman, Rep. Zoe Lofgren (D-Calif.), of violating House rules. Other complaints and counter-complaints have been flung for months between Lofgren and the professional staff leading the investigation.

On Thursday, the committee's staff director and chief counsel, R. Blake Chisam, notified

the House that he is resigning. Because of his closeness to Lofgren, his departure is seen as an indicator that Lofgren might not return as the committee's top Democrat after Republicans take control of the House next year.

At least one committee member, Rep. G.K. Butterfield (D-N.C.), has urged that the entire panel be replaced in the next Congress and that a new investigative team take a fresh look at the allegations.

The breakdown of the Waters inquiry highlights the difficulties that the ethics committee faces in policing House colleagues. The panel sought to restore public confidence in its work during the current Congress, scrutinizing nearly two dozen members for possible transgressions and preparing for several trials. But its staff of 14 was quickly

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The Washington Post

Ethics probe of Rep. Waters derailed by infighting, sources say

overwhelmed.

The Waters probe focused on whether the California Democrat, who chairs a House banking subcommittee, had improperly arranged federal help for OneUnited, a minority-owned bank in which her husband had a significant investment. But the investigation followed a twisting path, according to congressional sources, and sometimes missed what many agree in hindsight were important steps.

Last month, Lofgren tried to fire two investigators, and she told others that they had misled her about the probe. But the firings were blocked by Bonner, and the employees remain on paid leave.

The events at issue involved players at the Treasury Department, the Federal Deposit Insurance Corp. and the House Financial Services Committee. The committee is headed by Rep. Barney Frank (D-Mass.), who has acknowledged helping to write legislation that enabled OneUnited to qualify for a \$12 million federal bailout.

Lofgren had been pushing for the Waters trial to start in mid-September but staff investigators said that was "impossible," interne-mails show. Then, in September, after asking the staff for an update on its preparations, Lofgren became concerned that it was not ready and urged putting off the

trial. Lofgren and Chisam learned that investigators were missing important e-mails from Waters's chief of staff and hoped to request or subpoena them.

At a Sept. 16 meeting, however, investigators told her that they were fully prepared to "begin a hearing immediately," according to sources and a staff e-mail. Staff members complained that Lofgren and Chisam had obstructed their probe.

In conversations with others, Lofgren and Chisam have, in turn, accused the staff of failing to collect needed documents before an investigative subcommittee formally accused Waters of violations in June. They also say that the staff did not disclose in a timely way some of the evidence gaps.

For their part, some staff members said Lofgren repeatedly refused to approve a

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The Washington Post

Ethics probe of Rep. Waters derailed by infighting, sources say

request to subpoena Waters in late 2009 and a request early this year to subpoena Frank and his staff. Instead, they said, she repeatedly sought voluntary compliance with evidence requests. Lofgren generally has sought records voluntarily and subpoenaed them only when members did not comply.

As tensions escalated, staff members had begun to distribute updates and recommendations about the probe to all committee members, rather than first clearing them with Chisam and Lofgren.

In an e-mail to Lofgren and other committee members Oct. 13, for example, staff prosecutor Sheria Clarke called Lofgren's efforts to shorten the trial "troubling" and said her decision could compromise the staff's efforts to present a "fair, thorough, and effective" case. The staff wanted 30 hours to present its case, but Lofgren ordered that the charges be presented in six hours, according to congressional and legal sources.

Perhaps the only issue on which all of those involved in the probe agree is that they had expected Waters to concede that she had made mistakes and to accept an admonishment. Her refusal to do so caught everyone by surprise and caused the staff to renew the search for evidence.

Waters's attorneys have said the renewed search was illegal. They have told Waters's g

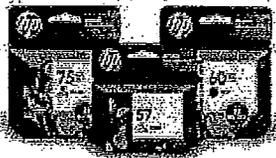
randson and chief of staff, Mikael Moore, who was at the center of her office's interactions with OneUnited, that he need not turn over e-mails subpoenaed in September from a private account. No action has been taken by the committee to enforce the subpoena.

Richard Sauber, an attorney for the suspended staff investigators, Stacey Sovereign and Morgan Kim, said criticisms of his clients' handling of the case are "egregious."

"The Chair of the House Ethics Committee . . . placed my clients on administrative leave without explanation," he said in an e-mailed statement. "Now my clients are subjected to a series of cowardly, anonymous leaks - all in violation of Committee rules - from certain elements of the Committee purporting to blame my clients for a host of transgressions."

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The Washington Post

Ethics probe of Rep. Waters derailed by infighting, sources say

Waters attorney R. Stanley Brand said the committee and its staff ignored committee rules and tried to force Waters into a quick settlement. When she refused, they spent months "trying to manufacture a case," he said.

"No amount of backtracking, adjusting of theories or concealment could overcome the truth," Brand said. "There were no violations," and "inevitably the case unraveled."

smithj@washpost.com leonnigc@washpost.com

Staff writers Kimberly Kindy and Paul Kane and research editor Alice Crites contributed to this report.

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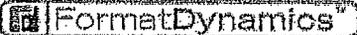
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EXHIBIT 11

10-15-2010

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
ADJUDICATORY SUBCOMMITTEE

In the Matter of
REPRESENTATIVE MAXINE WATERS,
Respondent.

COMMITTEE COUNSEL'S OBJECTIONS TO THE CHAIR'S PROPOSED
ADJUDICATORY HEARING PROCEDURES

On October 12, 2010, the Chair of the adjudicatory subcommittee in the matter of Representative Maxine Waters presented a letter (Chair's Letter) outlining "the procedures applicable to proceedings before the adjudicatory subcommittee[.]"¹ Pursuant to the Chair's Letter, "[a]ny objections regarding the procedure for the adjudicatory hearing must be submitted to the adjudicatory subcommittee in writing by October 15, 2010."² Accordingly, Committee Counsel hereby respectfully submits the following objections to the proposed hearing procedures outlined in the Chair's Letter.

LEGAL STANDARD

Pursuant to Committee Rule 1(a): "So far as applicable, these rules and the Rules of the House of Representatives shall be the rules of the Committee and any subcommittee."³

"The rules of the Committee may be modified, amended, or repealed by a vote of a majority of the Committee."⁴ Further, "[w]hen the interests of justice so require, the Committee,

¹ Chair's Letter at 1.

² Chair's Letter at 5.

³ Committee Rule 1(a).

⁴ Committee Rule 1(b).

by a majority vote of its members, may adopt any special procedures, not inconsistent with these rules, deemed necessary to resolve a particular matter before it.”⁵

OBJECTIONS

Objection 1

Committee Counsel objects to the Chair’s proposed time limit for the adjudicatory hearing. Pursuant to the Chair’s proposed schedule, “Committee counsel and [Respondent’s] counsel will each be allowed 6 hours to present their respective cases, exclusive of the time allotted for opening and closing arguments.”⁶ This time constraint is unreasonable and raises serious concerns about the ability of Committee Counsel fairly and fully to present the case voted on by the investigative subcommittee. As the Chair’s Letter observed, Committee Counsel has the burden of proving the charges in the statement of alleged violation by clear and convincing evidence. This is not only a higher burden of proof than that applied by the investigative subcommittee in adopting the statement of alleged violation; to protect the rights of the Respondent, evidence presented at the hearing is also subject to an adversarial process which, by its very nature, is time-consuming. As federal courts have long held, because of the high standard of proof – in this case “clear and convincing” – the party on whom the burden rests is entitled to present evidence that meets the standard and does so persuasively.⁷

Providing the party with the burden of proof sufficient time to properly present the party’s case is particularly important in a case such as this, where at least one of the counts requires Committee Counsel to present evidence regarding an appearance of impropriety subject to a “reasonable person” standard.⁸ A reasonable person standard requires providing full context to the finder of fact, who should be “well-informed about the surrounding facts and circumstances[.]”⁹

⁵ Committee Rule 1(e).

⁶ Chair’s Letter at 5.

⁷ See, e.g., *U.S. v. Gallo*, 543 F.2d 361, 365 (D.C. Cir. 1976) (because of its “heavy burden of proof beyond a reasonable doubt as to all elements of the offense, the government is not to be restricted to a modest quantum of evidence that will support the indictment.”) (emphasis added).

⁸ See Statement of Alleged Violation, Count III.

⁹ *In re Sherwin Williams Company*, 607 F.3d 474, 477-478 (7th Cir. 2010) (“our inquiry is ‘from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.’ . . . [A] reasonable person is

Moreover, as Respondent has previously observed, the facts at issue in this matter are complicated. The investigative subcommittee's work took approximately nine months. What is at issue is not just whether Respondent contacted then-Secretary Paulson to set up a meeting for OneUnited executives with Treasury officials, but also events key to the charges in the statement of alleged violation that occurred long before the Treasury meeting and in the months afterward. Only after being presented with the evidence relating to these issues will the Members of the adjudicatory subcommittee be able to determine the facts *de novo*, and to decide whether each violation in the statement of alleged violation has been proven by clear and convincing evidence. It is unreasonable to expect the adjudicatory subcommittee Members to absorb, let alone decide the facts, in six hours, when they have no background regarding the case and are hearing all the evidence for the first time.

The Chair's Letter further states that "[t]he 6 hour limitation on presentation of each side's case is subject to reconsideration based upon a reasonable request for additional time."¹⁰ During the adjudicatory hearing in the matter of Representative James Traficant, the adjudicatory subcommittee admitted the certified and underlying trial transcripts of Representative Traficant, which trial took seven to eight weeks in federal court. Notwithstanding a full and certified record of seven to eight weeks of testimony subject to a higher burden of proof and strict evidentiary rules, the Committee counsel took an additional three days of hearing time to meet its burden and prove its case under the same clear and convincing standard. Committee Counsel respectfully submits that the Committee does not have access to a full factual development that would be offered by a seven to eight week trial. Therefore, the Chair's proposed time limit is not sufficient to develop fully the facts in this case. Therefore, Committee Counsel requests that Committee Counsel be allowed to present all relevant witness testimony necessary to prove the allegations set forth in the statement of alleged violation and for Committee Counsel to meet its burden of proof. Committee Counsel currently estimates that it will take thirty hours to properly present its case, exclusive of the time allotted for opening and closing arguments.

familiar with the documents at issue, as well as the context in which they came into being. In addition to being well-informed about the surrounding facts and circumstances, for purposes of our analysis, a reasonable person is a 'thoughtful observer rather than . . . a hypersensitive or unduly suspicious person.' Finally, a reasonable person is able to appreciate the significance of the facts in light of relevant legal standards and judicial practice and can discern whether any appearance of impropriety is merely an illusion."¹⁰ (internal citations omitted).

¹⁰ Chair's Letter at 5.

Objection 2

Committee Counsel objects to the Chair's unilateral attempt to set time limits for the adjudicatory hearing. Pursuant to the Chair's proposed schedule, "Committee counsel and [Respondent's] counsel will each be allowed 6 hours to present their respective cases, exclusive of the time allotted for opening and closing arguments."¹¹ Pursuant to Committee Rule 5(e), "[a] subcommittee shall meet at the discretion of its Chair."¹² The Committee Rules, however, are silent as to whether the Chair has the unilateral authority to determine the length of a subcommittee hearing.

Objection 3

Committee Counsel objects to the Chair's unilateral attempt to alter deadlines provided for in the Committee Rules. These deadlines, include: (1) the October 18, 2010, deadline for Committee Counsel to provide a copy of "the evidence that Committee counsel intends to present at the adjudicatory hearing";¹³ and (2) the November 9, 2010, deadline for Respondent to provide Committee Counsel with copies of the documents or other evidence Respondent intends to introduce at the adjudicatory hearing and a list of the witnesses Respondent intends to call at the adjudicatory hearing and summaries of the witnesses' expected testimony.¹⁴

Committee Rule 23(f)(1) requires that Committee Counsel provide Respondent with access to the evidence Committee Counsel intends to use at an adjudicatory hearing and the names of the witnesses Committee Counsel intends to call, and a summary of their expected testimony, no less than fifteen calendar days prior to an adjudicatory hearing.¹⁵ Fifteen days before November 29, 2010, is November 14, 2010, twenty-seven days after the Chair's proposed deadline. Committee Rule 23(g) requires that Respondent provide Committee Counsel with copies of the evidence Respondent intends to use at an adjudicatory hearing and the names of the witnesses Respondent intends to call, and a summary of their expected testimony, no less than

¹¹ Chair's Letter at 5.

¹² Committee Rule 5(e).

¹³ Chair's Letter at 3.

¹⁴ Chair's Letter at 3.

¹⁵ Committee Rule 23(f)(1).

five calendar days prior to an adjudicatory hearing.¹⁶ Five days before November 29, 2010, is November 24, 2010, fifteen days after the Chair's proposed deadline.

Committee Counsel does not, necessarily, object to altering the deadlines in the Committee Rules. Committee Counsel objects to the Chair unilaterally altering the deadlines. Committee Rules do not give the Chair the authority to unilaterally alter the Committee Rules. Instead, Committee Rule 1(b) states, "[t]he rules of the Committee may be modified, amended, or repealed by a vote of a majority of the Committee."¹⁷

Objection 4

Committee Counsel objects to the proposed deadline for Committee Counsel to provide a copy of the evidence it intends to present at the adjudicatory hearing to the extent that the deadline would prohibit Committee Counsel from introducing evidence not in Committee Counsel's possession on October 18, 2010, but acquired by Committee Counsel more than fifteen days before the adjudicatory hearing. Pursuant to the Chair's proposed procedure, Committee Counsel must provide a copy of "the evidence that Committee counsel intends to present at the adjudicatory hearing" by October 18, 2010.¹⁸ Committee Rule 23(f)(1) requires that Committee Counsel provide Respondent with access to the evidence Committee Counsel intends to use at an adjudicatory hearing and the names of the witnesses Committee Counsel intends to call, and a summary of their expected testimony, no less than fifteen calendar days prior to an adjudicatory hearing.¹⁹ Fifteen days before November 29, 2010, is November 14, 2010, twenty-seven days after the Chair's proposed deadline. Committee Rule 23(f)(1) further provides that "[e]xcept in extraordinary circumstances, no evidence may be introduced . . . in an adjudicatory hearing unless the respondent has been afforded a prior opportunity to review such evidence[.]"²⁰ To the extent the Chair's proposed deadline would prohibit or exclude, except in extraordinary circumstances, Committee Counsel from introducing evidence not in Committee Counsel's possession on October 18, 2010, but acquired by Committee Counsel more than fifteen days before the adjudicatory hearing, this would be contrary to the Committee Rule

¹⁶ Committee Rule 23(g).

¹⁷ Committee Rule 1(b).

¹⁸ Chair's Letter at 3.

¹⁹ Committee Rule 23(f)(1).

²⁰ *Id.*

23(f)(1). Committee Counsel further specifically objects to this deadline on the grounds that certain subpoenas issued by the adjudicatory subcommittee are still outstanding.

Objection 5

Committee Counsel objects to the deadlines provided in the Chair's letter that are not provided for in the Committee Rules. These deadlines, include: (1) the October 15, 2010, deadline for submission of objections to the procedure for the adjudicatory hearing;²¹ (2) the October 29, 2010, deadline for submission of proposed stipulations;²² (3) the October 29, 2010, deadline for Respondent to submit objections to Committee Counsel's exhibits and anticipated witness testimony;²³ (4) the November 15, 2010, deadline for Committee counsel to submit objections to Respondent's exhibits and anticipated witness testimony;²⁴ and (5) the November 19, 2010, deadline for each party to provide copies of its exhibits to each Member of the adjudicatory subcommittee.²⁵

The Committee Rules provide for objections made during the course of a public hearing²⁶ and entering into stipulations if the parties so choose and if such stipulations are approved by the subcommittee.²⁷ The Committee Rules, however, are silent as to deadlines for objections and submissions of stipulations. The Committee Rules are also silent as to a deadline for providing copies of exhibits to Members of the adjudicatory subcommittee. Any such deadlines are outside the Committee Rules and would thus qualify as a "special procedure" as contemplated by Committee Rule 1(e).²⁸

Committee Counsel does not, necessarily, object to creating special procedures for this matter. Committee Counsel objects to the Chair unilaterally creating the special procedures. Committee Rules do not give the Chair authority to unilaterally create special procedures. Instead, Committee Rule 1(e) states, "[w]hen the interests of justice so require, the Committee,

²¹ Chair's Letter at 5.

²² Chair's Letter at 2.

²³ Chair's Letter at 3.

²⁴ Chair's Letter at 3.

²⁵ Chair's Letter at 4.

²⁶ Committee Rule 23(I)(2).

²⁷ Committee Rule 23(I)(4).

²⁸ Committee Rule 1(e).

by a majority vote of its members, may adopt any special procedures, not inconsistent with these rules, deemed necessary to resolve a particular matter before it."²⁹

Objection 6

Committee Counsel objects to the Chair's proposed procedures to the extent they would allow the subcommittee to accept witness transcripts taken under the investigative subcommittee's direction into the record even if the witness is available to testify. The Chair's Letter states that "[t]he adjudicatory subcommittee may accept '[d]epositions, interrogatories, and sworn statements taken under any investigative subcommittee direction' into the record of the adjudicatory proceedings."³⁰ Committee Rule 23(j)(3)(i), however, states that "deposition transcripts and affidavits obtained during the inquiry may be used in lieu of live witnesses if the witness is unavailable["³¹ To the extent that the Chair's proposed procedures would allow the adjudicatory subcommittee to accept witness transcripts taken under the investigative subcommittee's direction into the record even if the witness is available to testify, this procedure would violate Committee Rule 23(j)(3)(i). Moreover, this procedure would prevent both parties from properly impeaching a witness' testimony for bias, inconsistent statements, motive, prejudice, or character through cross-examinations.³²

Objection 7

Committee Counsel objects to the proposed "pre-hearing conference" to the extent that conference is not a public hearing. Committee Rule 23(e) states that all hearings of the adjudicatory subcommittee "shall be open to the public unless the adjudicatory subcommittee, pursuant to such clause, determines that the hearings or any part thereof should be closed."³³ Pursuant to House Rule XI, clause 2(g)(1), to hold a closed hearing, the adjudicatory

²⁹ Committee Rule 1(e).

³⁰ Chair's Letter at 2.

³¹ Committee Rule 23(j)(3)(i) (emphasis added).

³² It is true that the adjudicatory subcommittee in the matter of Representative Traficant admitted the underlying trial transcripts of Representative Traficant, which included witness testimony from the trial. However, the underlying trial of Representative Traficant included both direct and cross-examination of witnesses, which permitted the parties to impeach a witness' testimony.

³³ Committee Rule 23(e).

subcommittee must determine in an open session with a majority present that all or a portion of a hearing:

shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House.³⁴

The Chair's proposed procedures are silent as to whether the "pre-hearing conference" will be public. The name of the conference, however, indicates that it will not be a public hearing. To the extent the Chair's proposed procedures contemplate holding a closed hearing without following the established procedures for closing a hearing, this would be in violation of House and Committee Rules.

Objection 8

Committee Counsel objects to the deadline for submission of objections to the procedure for the adjudicatory hearing. The Chair's Letter requires that "[a]ny objections regarding the procedure for the adjudicatory hearing must be submitted to the adjudicatory subcommittee in writing by October 15, 2010."³⁵ The proposed procedures outlined in the Chair's Letter are incomplete, and some of the proposed procedures raise additional questions, including but not limited to: whether the parties are required to exchange pre-hearing filings such as objections; whether the parties will be expected to file written responses to the opposing party's pre-hearing filings; and whether a party's allotted hearing time will include time used for raising or responding to objections, or time used for cross-examining hostile and possibly time-consuming witnesses.³⁶ For this reason, Committee Counsel reserves the right to object to any of the Chair's proposed procedures to the extent that the Chair, any subcommittee Member, or any party have differing interpretations of the procedures.

³⁴ House Rule XI, clause 2(g)(1).

³⁵ Chair's Letter at 5.

³⁶ Committee Counsel will provide a more thorough recitation of its questions regarding the proposed procedure at a later date.

Objection 9

Committee Counsel objects to the Chair's Letter to the extent that the Chair's letter appropriates to the Chair duties reserved for the adjudicatory subcommittee. For example, Committee Rule 23(f)(1) states, "[t]he adjudicatory subcommittee shall, in writing, notify the respondent that the respondent and respondent's counsel have the right to inspect . . . documents . . . that the adjudicatory subcommittee counsel intends to use as evidence against the respondent in an adjudicatory hearing."³⁷ The Chair's Letter appears to attempt to fulfill this requirement, but the Chair's Letter was only sent by the Chair and not jointly by the Chair and the Ranking Member of the adjudicatory subcommittee, or the entire subcommittee.

CONCLUSION

Committee Counsel respectfully submits these objections. As noted above, Committee Counsel reserves its right to make further objections to the proposed procedures as are necessary.

Copies to:

Stanley M. Brand, Esq.
Andrew Herman, Esq.
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005
Counsel to Respondent Maxine Waters

³⁷ Committee Rule 23(f)(1) (emphasis added).

EXHIBIT 12

ZOE LOFGREN, CALIFORNIA
CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL ODNAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

October 20, 2010

CONFIDENTIAL

Ms. C. Morgan Kim
Deputy Chief Counsel
Committee on Standards of Official Conduct
Suite HT-2, The Capitol
Washington, DC 20515

Re: In the Matter of Representative Maxine Waters

Dear Ms. Kim:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Maxine Waters, I am responding to the October 15, 2010, filing in this matter, Committee Counsel's Objections to the Chair's Proposed Adjudicatory Hearing Procedures.¹

Legal standard

Under Committee Rule 23(i)(2), the Chair "shall rule upon any question of admissibility or relevance of evidence, motion, procedure, or any other matter." Such rulings may be appealed by a "witness, witness counsel, or a member of the subcommittee."² In the event that a ruling of the Chair under this provision is appealed, a majority vote of the members present at the proceeding at which the ruling is appealed shall govern the question of admissibility, and no appeal shall lie to the Committee.³ By this letter, I am responding to each of the nine objections raised by Committee counsel in their October 15 filing. The Ranking Member of the ASC, Representative Jo Bonner; respondent's counsel, Stanley M. Brand and Andrew D. Herman; and the Committee Chief Counsel, R. Blake Chisam, will all be served copies of this letter.

Objection 1 – length of hearing

Committee counsel object to "the Chair's proposed time limit for the adjudicatory hearing."⁴ This objection is overruled.

¹ Although the filing is unsigned, the Chair understands that this filing is submitted by C. Morgan Kim, Stacey Sovereign, Tom Rust, and Sheria Clarke, the Committee counsel assigned to this matter (hereinafter "Committee counsel").

² Committee Rule 23(i)(2).

³ *Id.*

⁴ Committee Counsel's Objections to the Chair's Proposed Adjudicatory Hearing Procedures (Committee Counsel's Objections) at 2.

Since designating the ASC in this matter, I have repeatedly requested that counsel provide a framework for a practical schedule that would resolve the entire ASC process as expeditiously as possible, while ensuring that a fair forum is provided for the parties to present their respective cases. As Committee counsel are aware, I have declined to authorize an adjudicatory schedule that would allow the parties 30 hours per side to present their cases, not including opening and closing arguments, because such a schedule would be impractical and inconsistent with prior Committee precedent for such hearings.

By Committee counsel's own estimate, allowing each party 30 hours per side would result in an adjudicatory hearing that would last between 8-10 legislative days and 12-14 legislative days, depending on the scope of stipulations agreed to by the parties and approved by the ASC. (That estimate is for the adjudicatory hearing alone, and does not account for the actions that must follow the hearing, including deliberations, transmittal of findings to the full Committee, etc.)

However, the Committee has not held a public disciplinary hearing longer than three days, and most have been one day or less. Committee counsel have made no attempt to distinguish this matter from the eight matters resolved in hearings of three days or less to explain why this matter merits or requires a substantially greater amount of time.

In addition, the Committee has held one adjudicatory hearing, regarding former Representative James A. Traficant, Jr., under the bifurcated system that separates the members who serve on the subcommittees tasked with investigative and adjudicatory roles. In that matter, the parties were allotted five hours per side to present their cases regarding a Statement of Alleged Violation that included ten counts and included alleged activities by the respondent spanning a period of 14 years. (Committee counsel in the matter of former Representative Traficant did not have three days to present their case, as Committee counsel in this matter suggest – they were allotted five hours to present their case, of which time they used approximately 90 minutes.⁵) By contrast, the Statement of Alleged Violation in this matter includes three counts based on factually related alleged activities occurring over a much shorter period of time.

Committee counsel cite only the matter of former Representative Traficant, and note that because the adjudicatory hearing in that matter followed a seven- to eight-week federal criminal trial and trial transcripts were admitted at the ASC hearing, Committee counsel required less time to develop the facts at the adjudicatory hearing. However, it does not follow that because the Traficant hearing came after a seven- to eight-week week federal criminal trial, the factual development in the Traficant adjudicatory hearing would have required seven to eight weeks if it had not followed a lengthy federal criminal trial.

⁵ Committee Counsel's Objections at 3.

In this regard, it is also important to bear in mind that the ASC proceeding is a hearing, not a trial. Although the respondent obviously has due process rights under Committee and House rules, the same scope of protections and rules that guide the adversarial process in a criminal trial simply do not apply in the adjudicatory hearing context.

The parties are not limited to introducing exhibits via live witness testimony, for example. In fact, as the October 12 scheduling letter makes clear, it is expected that once objections to evidence have been resolved in the pre-hearing process, copies of the parties' evidence will be provided to members of the ASC by November 19, 2010 – ten days before the start of the hearing – to ensure that members have adequate time to review the material so they can be prepared to evaluate witness testimony at the hearing and to ask questions, should they choose to do so.

Allowing each party six hours per side, exclusive of time allotted for opening and closing arguments, is consistent with prior Committee precedent and provides ample time for each party to make a full presentation to the ASC on the core issues of the matter.

Objection 2 – Chair's authority to set time limits for adjudicatory hearings

In addition to objecting to the length of the adjudicatory hearing, Committee counsel objects to the Chair's "unilateral attempt to set time limits for the adjudicatory hearing."⁶ This objection is overruled.

As Committee counsel notes, under Committee Rule 5(e), a "subcommittee shall meet at the discretion of its Chair." Committee counsel's argument that because the rule does not also explicitly state that the Chair may determine the length of a hearing the Chair lacks such "unilateral authority" is misplaced. The ability to schedule the length of a hearing or meeting is inherent in the Chair's authority to schedule meetings and hearings. For example, as Committee counsel are well aware, when the Chair provides notice to Committee members of a full Committee meeting, such notices include not only the date, location, and start time of a meeting, but also the end time of the meeting.

The authority of the Chair to unilaterally set the schedule was recently recognized by minority members of the Committee in a public statement, which stated in part that, "Committee Rule 5(e) provides that a subcommittee – including the adjudicatory subcommittees of the Rangel and Waters trials [sic] – shall meet *at the discretion of its Chair*."⁷

Objection 3 – "unilateral" altering of deadlines

Committee counsel also object to "the Chair's unilateral attempt to alter deadlines provided for in the Committee rules."⁸ This objection is overruled.

⁶ *Id.* at 4.

⁷ "Statement of the Ranking Republican Member of the Committee on Standards of Official Conduct," Sep. 28, 2010 (emphasis original).

⁸ Committee Counsel's Objections at 4.

Committee counsel argue that the Chair may not unilaterally schedule deadlines for the parties to provide copies of the evidence they intend to present to the opposing party other than 15 days before the adjudicatory hearing (for Committee counsel to provide copies to respondent's counsel) or 5 days before the adjudicatory hearing (for the respondent to provide copies to Committee counsel).⁹ Committee counsel argue that to set the deadline at any other time would require a change to Committee rules, and thus require a majority vote of the full Committee.¹⁰

This argument is inconsistent with Committee rules, Committee precedent, and the Chair's inherent authority to schedule deadlines related to the adjudicatory hearing.

The October 12 scheduling letter does not conflict with or alter the timeframe for the parties to provide copies of evidence under the relevant Committee rule. The relevant time periods in the rule are "no less than 15 calendar days prior" and "no less than 5 days prior" to an adjudicatory hearing.¹¹ Those deadlines set a minimum number of days before the hearing by which the parties must provide certain material to the opposing party – not an exact limit or a maximum number of days for such action. The wording of the rule clearly anticipates discretion for the respective deadlines to be set farther in advance of the hearing. Moreover, nothing in the Committee rules states that a Committee vote would be necessary to exercise such scheduling discretion.

For example, in the matter of former Representative Traficant, the Chair and Ranking Member of the ASC scheduled these same deadlines related to the adjudicatory hearing in that matter by sending a letter to the respondent. Among other deadlines scheduled in that letter, the letter announced that the respondent would have access to evidence that Committee counsel intended to present beginning June 28, 2002 – more than 15 days before the start of the adjudicatory hearing on July 15, 2002.

Those deadlines were scheduled and announced to the respondent at the same time the Chair designated the members of the ASC in that matter, and the letter was signed by both the Chair and Ranking Member of the ASC. The ASC in that matter did not meet until nearly two weeks after the various deadlines had been scheduled and the full Committee did not meet during that period, so Committee precedent is clear that a deadline greater than the 15 days or 5 days may be scheduled without a vote of either the full Committee or the ASC.

Although the scheduling letter in the matter of former Representative Traficant was signed by both the Chair and Ranking Member of the ASC, nothing in Committee rules required that both members sign the letter scheduling those deadlines. Those deadlines were scheduled although no explicit authority to schedule the deadlines exists in Committee rules other than Committee Rule 5(e), which establishes that a "subcommittee shall meet at the discretion of its Chair."

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ Committee Rule 23(f)(1), (g).

In this matter, the Chair exercised her authority to set the schedule for the adjudicatory hearing and related pre-hearing deadlines after the minority members of the Committee publicly requested that she do so.

Objection 4 -- copies of evidence

Committee counsel object to the "the proposed deadline for Committee Counsel to provide a copy of the evidence it intends to present at the adjudicatory hearing to the extent that the deadline would prohibit Committee Counsel from introducing evidence not in Committee Counsel's possession on October 18, 2010, but acquired by Committee Counsel more than 15 days before the adjudicatory hearing."¹² This objection is overruled.

As an initial matter, I have stayed the October 18 deadline set in the October 12 scheduling letter for Committee counsel to produce materials to the respondent. I provided notice of this decision to Committee counsel and the Ranking Republican Member of the ASC on October 18, and instructed Committee counsel to provide notice to the respondent's counsel. The parties will be notified of the rescheduled deadline.

However, the stay is not a reflection of the Chair's authority to schedule (or stay or reschedule) this deadline. As discussed above, the October 12 scheduling letter does not conflict with or alter the timeframe in the rule regarding Committee counsel's obligation to provide evidence, witness lists, and witness summaries to the respondent. The date set to provide the respondent copies of the evidence is not less than 15 days before the start of the adjudicatory hearing.¹³

To the extent that Committee counsel identify or discover additional evidence after the deadline set in the October 12 scheduling letter, neither the Committee rules nor the scheduling letter absolutely prohibit Committee counsel from either providing that evidence to the respondent or introducing that evidence at the adjudicatory hearing. Committee counsel retain the ability to seek approval to offer late-acquired or discovered evidence or testimony upon a showing that extraordinary circumstances justify its use.¹⁴

The rule balances flexibility and fairness for the parties. While setting a cutoff for parties to provide evidence to one another, it also allows that there may be circumstances in which it is appropriate to allow evidence that is acquired or discovered after the deadline, provided there is still prior notice to the opposing party. To the extent that the deadlines set in this matter by the October 12 scheduling letter are in advance of the minimum deadlines set by the rule, it is conceivable that there may be evidence which the parties have not yet acquired which may still be ruled admissible.

¹² Committee Counsel's Objections at 5.

¹³ Committee Rule 23(f)(1).

¹⁴ *Id.*

Objection 5 – other deadlines

Committee counsel object to the “deadlines provided in the Chair’s letter that are not provided for in the Committee Rules.”¹⁵ This objection is overruled.

Committee counsel argue that because Committee rules “are silent as to deadlines for objections and submissions of stipulations” and “providing copies of exhibits to Members of the adjudicatory subcommittee,” any such deadlines are “outside the Committee Rules and would thus qualify as a ‘special procedure’ as contemplated by Committee Rule 1(c).”¹⁶ Thus, Committee counsel assert that setting any of these types of deadlines requires a majority vote of the Committee.

As discussed above, this argument is inconsistent with Committee precedent. In the matter of former Representative Traficant, the same types of deadlines were scheduled and announced to the respondent at the same time that the Chair designated the members of the ASC in that matter, and the letter was signed by both the Chair and Ranking Member of the ASC. The ASC in that matter did not meet until nearly two weeks after the various deadlines had been scheduled and the full Committee did not meet during that period, so Committee precedent is clear that scheduling such deadlines is not a “special procedure” that would require a majority vote of the full Committee or of the ASC.

Although the scheduling letter in the matter of former Representative Traficant was signed by both the Chair and Ranking Member of the ASC, nothing in Committee rules required that both members sign the letter scheduling those deadlines. Those deadlines were scheduled although no explicit authority to schedule the deadlines exists in Committee rules other than Committee Rule 5(c), which establishes that a “subcommittee shall meet at the discretion of its Chair.”

In this matter, the Chair exercised her authority to set the schedule for the adjudicatory hearing and related pre-hearing deadlines after the minority members of the Committee publicly requested that she do so.

Objection 6 – witness transcripts

Committee counsel object to “allow[ing] the subcommittee to accept witness transcripts into the record even if the witness is available to testify.”¹⁷ This objection is overruled.

¹⁵ Committee Counsel’s Objections at 6.

¹⁶ *Id.*

¹⁷ *Id.* at 7.

The argument advanced by Committee counsel is inconsistent with Committee rules and precedent. First, the rule cited by Committee counsel specifies the order for receiving testimony and other relevant evidence during the adjudicatory hearing, "whenever possible".¹⁸ The first category is for "witnesses (deposition transcripts and affidavits obtained during the inquiry may be used in lieu of live witnesses if the witness is unavailable) and other evidence offered by the Committee counsel."¹⁹ The wording of the rule is not restrictive, but permissive. Rather than restrict the use of transcripts by Committee counsel only to situations where a live witness is unavailable, the rule simply permits the use of transcripts when a live witness is unavailable.²⁰

Second, to interpret the language of the rule as restricting the use of transcripts by Committee counsel where the live witness is unavailable, rather than as clarifying that such use is permitted, is inconsistent with prior Committee precedent. In the matter of former Representative Trafficant, the ASC specifically considered the question of whether to rely on the use of transcripts from a prior proceeding when the live witnesses could have been made available. There, the ASC determined that it would be appropriate to rely on the transcripts, even though the live witnesses could have been available to testify in person at the adjudicatory hearing.

Objection 7 – pre-hearing conference

Committee counsel object to the ASC holding a pre-hearing conference on the grounds that such a conference "is not a public hearing."²¹ This objection is overruled.

Committee rules clearly distinguish between "meetings" and "hearings" of the Committee and its subcommittees.²² A "meeting" of a subcommittee shall occur in executive session unless the subcommittee votes by an affirmative of a majority of its members to open the meeting to the public, while a "hearing" held by an ASC or any "sanction hearing" held by the Committee shall be open to the public unless the ASC or Committee votes by an affirmative of a majority of its members to close the meeting to the public.²³

It has previously been discussed at meetings of the Waters ASC that the ASC will likely hold a meeting in executive session at a time prior to the adjudicatory hearing to resolve any remaining pre-hearing issues, and to allow the parties an opportunity to appeal rulings as permitted to the entire ASC panel. Staff have not previously objected to such a meeting.

Accordingly, and per the October 12 scheduling, the parties are advised that a pre-hearing conference, if necessary, will be held as a closed meeting of the Waters ASC at 1:00 p.m. on November 18, 2010. Appropriate notice will be provided to the parties and members of the ASC regarding the scheduling of the pre-hearing conference when it becomes clear from other pre-hearing activity whether such a pre-hearing conference is required.

¹⁸ Committee Rule 23(j)(3).

¹⁹ Committee Rule 23(j)(3)(i).

²⁰ *Id.*

²¹ Committee Counsel's Objections at 7.

²² See Committee Rule 5.

²³ Committee Rule 5(c), (d).

Objection 8 -- other procedures

Committee counsel object to the "deadline of submission of objections to the procedure for the adjudicatory hearing" of October 15, 2010, set by the October 12 scheduling letter.²⁴ This objection is overruled.

As noted above, the Chair has authority to schedule deadlines related to the adjudicatory hearing, and opted to set a deadline for the parties to file objections to aspects of the October 12 scheduling letter.

However, the Chair recognizes that given the relative infrequency with which aspects of the Committee's rules relating to the ASC process have been employed, it is possible -- if not likely -- that the parties may have questions about the ASC process and procedure. The Chair took the consideration that such questions may not have been anticipated or resolved to date, in addition to other remaining pre-hearing procedural steps, into account in setting the adjudicatory hearing schedule.

The parties are strongly encouraged to raise any questions that may arise from perceived ambiguities or other issues relating to ASC procedures with one another. To the extent that the parties may reach agreement between themselves about how to resolve a procedural question, the parties could submit a joint filing to the Chair for consideration. If either party wishes to raise a question regarding ASC procedure other than in a joint filing, that party should submit an appropriate motion to the Chair and serve the other party.

Committee counsel have also raised several specific questions about hearing procedure, which are addressed in turn. First, Committee counsel ask "whether the parties are required to exchange pre-hearing filings such as objections."²⁵ Given the adversarial nature of the ASC process and its current posture, both parties should treat pre-hearing filings as adversarial filings that should be both filed with the Chair and served on the opposing party.

Second, Committee counsel ask "whether the parties will be expected to file written responses to the opposing party's pre-hearing filings."²⁶ The parties will not be expected to file written responses to the opposing party's pre-hearing filings. To the extent that a party may wish to file such a written response and it is possible to do within the deadlines established by the October 12 scheduling letter and any subsequent modifications or additions to the schedule, the parties may file such responses with the Chair. As noted above, such responses should be filed with the Chair, and also served on the opposing party.

²⁴ Committee Counsel's Objections at 8.

²⁵ *Id.*

²⁶ *Id.*

Third, Committee counsel ask “whether a party’s allotted hearing time will include time used for raising or responding to objections, or time used for cross-examining hostile and possibly time-consuming witnesses.”²⁷ As noted in the October 12 scheduling letter, Committee counsel and respondent’s counsel will each be allowed six hours to present their respective cases, exclusive of the time allotted for opening and closing arguments. Time used by a party for raising or responding to objections or cross-examining witnesses will count against that party’s overall allotted time of six hours. Notwithstanding the fact that Committee counsel’s request for 30 hours to present its case is overruled, the six hour limitation on presentation of each side’s case will remain subject to reconsideration based upon a reasonable request for additional time.

Objection 9 – notice to respondent

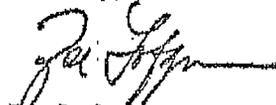
Committee counsel object to the October 12 scheduling letter “to the extent that [it] appropriates to the Chair duties reserved for the adjudicatory subcommittee.”²⁸ This objection is overruled.

Committee counsel base this argument on Committee Rule 23(f)(1), which states, in part, that an “adjudicatory subcommittee shall, in writing, notify the respondent that the respondent and respondent’s counsel have the right to inspect, review, copy, or photograph books, papers, documents, photographs, or other tangible objects that the adjudicatory subcommittee counsel intends to use as evidence against the respondent in an adjudicatory hearing.”

The act of providing a respondent with notice of the right to review and obtain copies of the evidence an ASC intends to use as evidence is mandatory and is, therefore, ministerial in nature. This obligation may arguably be fulfilled by transmitting to the respondent a copy of the Committee’s rules. There is no sound basis in reason or policy to read this rule so as to require an ASC to vote to provide this information to the respondent, to require that such notice be transmitted under the signature of all ASC members, or to require that such notice be transmitted under the joint signatures of both the Chair and Ranking Member. Thus, it is within the Chair’s authority to “fulfill” such a mandatory, ministerial obligation. Accordingly, the October 12 scheduling letter did not exceed the Chair’s authority under Committee rules.

For the aforementioned reasons, each of the nine objections raised by Committee counsel in their October 15, 2010, filing in this matter, Committee Counsel’s Objections to the Chair’s Proposed Adjudicatory Hearing Procedures, is hereby denied.

Sincerely,



Zoe Lofgren
Chair

²⁷ *Id.*

²⁸ *Id.* at 9.

Ms. C. Morgan Klein
October 20, 2010
Page 10 of 10

cc: Representative Jo Bonner, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct
Stanley M. Brand, Esq., Counsel for Respondent
Andrew D. Herman, Esq., Counsel for Respondent

EXHIBIT 13

ZOE LOFGREN, CALIFORNIA
CHAIR

BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT

ANIEL J. TAYLOR,
COUNSEL TO THE CHAIR

R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

October 22, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 226-7103

CONFIDENTIAL

Representative Maxine Waters
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, DC 20515

Ms. C. Morgan Kim
Deputy Chief Counsel
Committee on Standards of Official Conduct
Suite HT-2, The Capitol
Washington, DC 20515

Re: In the Matter of Representative Maxine Waters

Dear Representative Waters and Ms. Kim:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Maxine Waters, I am writing with regard to the adjudicatory hearing schedule in this matter.

Under Committee Rule 5(e), a "subcommittee shall meet at the discretion of its Chair." Pursuant to Rule 5(e) and Rule 23(e) of the Committee and Clause 2(g)(3) of House Rule XI, the Chair of an ASC is required to make a public announcement in advance of an adjudicatory hearing.

On October 7, 2010, as Chair of the ASC in this matter, I issued a public statement announcing that the adjudicatory hearing in this matter will begin on November 29, 2010, at 9:00 a.m. At that time, I also noted that substantial actions must be taken before a public hearing can begin. Accordingly, I publicly stated that I would notify the parties of the schedule and other procedural issues. On October 12, 2010, consistent with Committee precedent, I sent a letter to the parties scheduling various pre-hearing procedural deadlines.

Pursuant to Committee Rule 23(f)(1), Committee counsel are required to provide the respondent with access to the evidence they intend to use as evidence against her at the adjudicatory hearing, the names of witnesses Committee counsel intend to call, and a summary of their expected testimony no less than 15 calendar days prior to the hearing. The October 12 scheduling letter established a deadline of October 18, 2010, for Committee counsel to provide those materials to the respondent.

On October 18, 2010, I stayed that October 18 deadline. By this letter, I am notifying both parties that the deadline for Committee counsel to provide the respondent with copies of the evidence, their intended witness list, and a summary of the witnesses' expected testimony is rescheduled for October 25, 2010.

COE.WAT.OC.018780

Representative Maxine Waters and Ms. C. Morgan Kim
October 22, 2010
Page 2 of 2

This modification to the schedule may also impact the parties' ability to prepare for and meet other previously scheduled pre-hearing deadlines. Accordingly, although the adjudicatory hearing will proceed on November 29, I am hereby modifying another deadline established by the October 12 scheduling letter.

Under the terms of the October 12 scheduling letter, since subcommittee approval is required for any stipulations, the parties were required to jointly submit any proposed stipulations to the ASC in writing by October 27, 2010. Per this letter, that deadline will be rescheduled to November 15, 2010.

Unless otherwise specified in this letter, all deadlines announced in the October 12 scheduling letter are unchanged and remain in effect for both parties.

Sincerely,



Zoe Lofgren
Chair

cc: Representative Jo Bonner, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct
Stanley M. Brand, Esq., Counsel for Respondent
Andrew D. Herman, Esq., Counsel for Respondent

EXHIBIT 14

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on Standards of Official Conduct
Adjudicatory Subcommittee

In the Matter of

REPRESENTATIVE
MAXINE WATERS

RESPONDENT'S OBJECTIONS TO COMMITTEE COUNSEL'S
RULE 23(f)(1) PRODUCTION

On October 25, 2010, Committee counsel for the adjudicatory subcommittee in the Matter of Representative Maxine Waters provided to Respondent's counsel copies of "a set of redacted documents for use at the hearing" and a "set of summaries for the expected testimony for the witnesses that Committee counsel intends to call at the adjudicatory hearing." See October 25, 2010, Letter from Tom Rust, Counsel, to Stanley M. Brand. This production includes well over 3,000 pages of documents and a list of 24 witnesses.

Committee counsel produced this material pursuant to Committee Rule 23(f)(1), which directs it to produce both documentary evidence it "intends to use" and the "names of witnesses" that counsel "intends to call" along with a "summary of [those witnesses'] expected testimony." Counsel's production fails to satisfy Rule 23(f)(1)'s clear direction in that, instead of producing only the materials that it intends to utilize, Committee counsel has produced nearly all of the materials in its possession; Committee counsel has similarly declined to cull its witness list or provide actual summaries of the witnesses' testimony to Respondent.

Moreover, the vast majority of the proffered documents and witnesses are irrelevant to the charges set forth in the Statement of Alleged Violation ("SAV") and much of the material is unduly prejudicial to Respondent. Accordingly, Respondent hereby respectfully submits the following objections to Committee counsel's submission and requests an order from the Chair mandating that counsel resubmit the materials in an appropriate form. Given the voluminous records that she has received, Respondent cannot reasonably review the material and form objections by the October 29, 2010, deadline imposed by the Chair for doing so.

LEGAL STANDARD

Pursuant to Committee Rule 23(c): "The adjudicatory subcommittee shall hold a hearing to determine whether any counts in the Statement of Alleged Violation have been proved by clear and convincing evidence and shall make findings of fact"

Pursuant to Committee Rule 23(f)(1): "The adjudicatory subcommittee shall in writing, notify the respondent that the respondent and respondent's counsel have the right to inspect, review, copy, or photograph books, papers, documents, photographs, or other tangible objects that the adjudicatory subcommittee counsel intends to use as evidence against the respondent in an adjudicatory hearing. The respondent shall be given access to such evidence, and shall be provided the names of witnesses the subcommittee counsel intends to call, and a summary of their expected testimony"

OBECTIONS

Objection 1

Respondent objects to Committee counsel's submission of thousands of pages of documentary evidence, exceeding any reasonable amount of material that it could

"intend" to use in the six hours allotted to counsel to "make a full presentation to the [adjudicatory subcommittee] on the core issues of the matter." See October 20, 2010, Letter from Zoe Lofgren, Chair of the Adjudicatory Subcommittee, to C. Morgan Kim, Deputy Chief Counsel.

Committee counsel's voluminous submission cannot not satisfy any reasonable concept of "intend." Even accounting for the uncertainties attendant to any legal hearing, it is simply not reasonable for Committee counsel to assert that it "intends" to use at the hearing each and every of the thousands of documents submitted on October 25 to Respondent's counsel. For example, Committee counsel cannot actually intend to use every document submitted by Congressman Barney Frank, every page of Treasury Secretary Henry Paulson's daily calendar that it received, and every document provided by the Treasury Department. In short, Committee counsel has designated most, if not every, document that it received during its investigation as a document that it "intends to use as evidence in [the] adjudicatory hearing." Such a submission does not satisfy the clear direction of Committee Rule 23(f).

Committee counsel's refusal to provide any guidance as to the presentation of its actual case hamstrings Respondent's and her counsel's ability to prepare for the hearing. Indeed, without guidance from Committee counsel as to which documents it actually "intends" to utilize to establish the charges in the SAV, Respondent's counsel can only conclude that Committee counsel intends to rely upon irrelevant and potentially prejudicial information; evidence to which, of course, Respondent's counsel would rightfully object.

In that vein, this submission of documents apparently indicates Committee counsel's intent to ignore Committee Rule 23(e) directing Committee counsel to simply prove the "counts in the Statement of Alleged Violation . . . by clear and convincing evidence." Committee counsel's misdirection is evidenced by its language supporting Objection One to Committee Counsel's Objections to the Chair's Proposed Adjudicatory Hearing Procedures. There, Committee Counsel asserted that: "What is at issue is not just whether Respondent contacted then-Secretary Paulson to set up a meeting for OneUnited executives with Treasury officials, but also events key to the charges in the statement of alleged violation that occurred long before the Treasury meeting and in the months afterward." *Id.* at 3. This assertion is at odds with, and significantly expands the scope of, the allegations set forth in the SAV.

As a general matter, the three counts alleged in the SAV are limited and narrow. Indeed, all three counts relate *solely* to actions taken by Respondent's Chief of Staff subsequent to the meeting request made to Secretary Paulson and Respondent's alleged failure to supervise her Chief of Staff's actions properly.

More specifically, the SAV lists Respondent's purported failure to supervise as the *only* action potentially subject to sanction by the adjudicatory subcommittee. See SAV ¶ 49 (Count I: "Respondent's failure to instruct her Chief of Staff to refrain from assisting OneUnited after Respondent realized 'she should not be involved'" violated House Rule XXIII, clause 1); SAV ¶ 56 (Count II: Respondent's "failure to instruct" violated House Rule XXIII, clause 2); SAV ¶ 62 (Count III: Respondent's responsibility for Chief of Staff's "continued involvement in assisting OneUnited" violated Code of Ethics for Government Service, clause 5).

Respondent's Objections to Committee Counsel's Rule 23(f) Production
Page 4

This purported failure to supervise is the gravamen of each of the SAV's three counts. Conversely, Respondent's contact with Secretary Paulson is neither relevant to establishing the counts in the SAV, as required by Committee Rule 23(c), nor a matter of factual dispute. Although the SAV asserts that Representative Waters called Secretary Paulson and requested a meeting on behalf of the National Bankers Association, SAV ¶ 14, none of the three counts alleged in the SAV relate or refer to that meeting in any way. While testimony related to Rep. Waters' phone call to Secretary Paulson might be admissible to provide context for those later actions, such testimony is simply irrelevant to establishing the ultimate validity of the counts contained in the SAV.¹

To the extent that specific facts relating to the phone call and meeting are relevant to the SAV, Respondent does not dispute the details relating to those events. Rep. Waters has answered all questions posed to her by members of the investigative subcommittee and Committee Counsel relating to her interaction with Secretary Paulson. *See, e.g.,* Interview of Rep. Waters, CSOC.WAT.TRANS.636-37.

Committee Counsel's assertion that it will need to present facts relating to "events key to the charges in the statement of alleged violation that occurred long before the Treasury meeting and in the months afterward," Objections at 3, is similarly flawed. Respondent does not dispute Committee Counsel's need to provide factual context for the three charges. But, as detailed above, the counts in the SAV are narrow. Committee Counsel has proffered no justification for the need to elucidate events that occurred "long

¹ Indeed, given this Committee's decision to reject the recommendation by the Office of Congressional Ethics for further review relating to the phone call, it is apparent that this Committee has already determined that Rep. Waters' interaction with Secretary Paulson complied fully with House rules.

before the Treasury meeting." Such events are not at issue in the SAV. As for events subsequent to that meeting, the SAV sets forth the purported actions taken by Rep. Waters Chief of Staff that give rise to the charges. See SAV ¶¶ 25-31 (detailing series of emails sent and received by Respondent's Chief of Staff over a 10-day period).² Any other "subsequent events" are simply irrelevant to the claims.

Committee Counsel provides no explanation, nor should it be permitted to assert, why this matter requires a more wide-ranging presentation than that offered in the controlling SAV. Indeed in denying Respondent's Motion for a Bill of Particulars pursuant to Committee Rule 22(b), the Investigative Subcommittee, represented by now-Committee counsel determined that:

1. Each count of the Statement of Alleged Violation contains a plain and concise statement of the alleged facts of the violation.

3. Each count of the Statement of Alleged Violation contains information sufficient to advise Respondent of the allegations against her, and sufficient to afford her a meaningful opportunity to respond to those allegations.

Order Denying Respondent's Motion for a Bill of Particulars. The Investigative Subcommittee, with the assistance of Committee counsel, elected to issue the SAV and ratified it in the face of Respondent's objections. That document controls this proceeding

² To this point, Committee counsel's decision to omit Respondent's Chief of Staff, Mikael Moore, from its witness list also illustrates its misguided view of its obligations under Committee rules. While it is not the role of Respondent's counsel to advise Committee counsel on the presentation of its case, given that Mr. Moore's conduct is the central focus of the SAV (see, e.g., SAV ¶¶ 25-31) and the sole source of Respondent's alleged misconduct, it is hard to imagine how counsel would be able to meet its burden of proof without presenting Mr. Moore's testimony.

and Committee counsel cannot now expand the breadth of the facts at issue because it now fears that those facts are inadequate to establish the charges contained therein.

As controlled by the contents of the SAV, the adjudicatory hearing on the three counts at issue concerns Respondent's purported failure to supervise seven discrete actions by her Chief of Staff. Any documentary evidence submitted that does not relate to those three counts is irrelevant and potentially prejudicial to Respondent. Accordingly, the Chair should direct Committee counsel to withdraw the submitted materials and redesignate only the material that it actually "intends" to use at the adjudicatory hearing.

Objection 2

Incorporating the arguments made above, Respondent similarly objects to Committee counsel's submission of 24 witnesses that it ostensibly "intends to call." Given the limited subject matter of the counts in the SAV and the six-hour time constraint, Committee counsel cannot actually "intend" to call all 24 of these witnesses. Again, even in light of any uncertainty regarding testimony and cross-examination, much of the individuals on the witness list are cumulative, irrelevant and potentially prejudicial.

Respondent's counsel can only assume that Committee counsel either does not truly intend to call all 24 witnesses or, for some unknown and improper purpose, plans to elicit irrelevant and potentially prejudicial testimony unrelated to the counts in the SAV. As such, the Chair should direct Committee counsel to withdraw its submission of this witness and redesignate only those witnesses which it actually "intends" to use at the adjudicatory hearing to establish the counts set forth in the SAV.

Objection 3

Committee counsel's witness submission also fails to provide "a summary" of the witnesses "expected testimony," as required by Committee Rule 23(f). Its purported summaries provide that the witness "may be called to testify before the adjudicatory committee regarding the following relevant topics." These lists of "topics" do not satisfy any fair definition of "summary," defined by *Merriam-Webster* Dictionary as: "an abstract, abridgment, or compendium especially of a preceding discourse." The topic lists provided by Committee counsel give no indication as to the actual content of the testimony, as contemplated by the "summary" requirement. Instead, the documents merely list the general topics to be elicited from each witness.

As discussed above, this inadequate disclosure prevents Respondent and her counsel from fully developing her case or assessing whether and how to object to any of the proposed witness. Moreover, these topic lists again indicate that Committee counsel intends to elicit irrelevant, cumulative and potentially prejudicial testimony from the witnesses in violation of Committee Rules. As such, the Chair should direct Committee counsel to withdraw its summaries of the witness testimony and resubmit actual summaries of the contents of the intended witnesses' testimony.

Respectfully submitted this 27th day of October, 2010

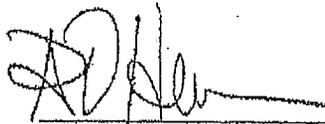


Stanley M. Brand
Andrew D. Herman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Representative Maxine Waters

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on October 27, 2010, I hereby served a copy of the foregoing Motion to Dismiss the Statement of Alleged Violations via electronic mail and first class mail, on Daniel J. Taylor, Counsel to the Chair, and Blake Chisam, Counsel, House Committee on Standards of Official Conduct;



Andrew D. Herman

EXHIBIT 15

ZOE LOFGREN, CALIFORNIA
CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS
U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, DC 20515-6328
October 28, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER
K. MICHAEL DONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCAUL, TEXAS

KELLY A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER
SUITE HT-2, THE CAPITOL
(202) 225-7103

CONFIDENTIAL

Mr. Stanley M. Brand, Esq.
Mr. Andrew D. Herman, Esq.
Brand Law Group, P.C.
923 15th Street, N.W.
Washington, DC 20005

Re: In the Matter of Representative Maxine Waters

Dear Messrs. Brand and Herman:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Maxine Waters, I am responding to the October 27, 2010, filing in this matter, Respondent's Objections to Committee Counsel's Rule 23(f)(1) Production.

Legal standard

Under Committee Rule 23(i)(2), the Chair "shall rule upon any question of admissibility or relevance of evidence, motion, procedure, or any other matter." Such rulings may be appealed by a "witness, witness counsel, or a member of the subcommittee."¹ In the event that a ruling of the Chair under this provision is appealed, a majority vote of the members present at the proceeding at which the ruling is appealed shall govern the question of admissibility, and no appeal shall lie to the Committee.² By this letter, I am responding to each of the three objections raised by Respondent's counsel in their October 27 filing. The Ranking Member of the ASC, Representative Jo Bonner; Committee counsel; and the Committee Chief Counsel, R. Blake Chisam, will all be served copies of this letter.³

Objection 1 – evidence

Respondent's counsel object to the material produced by Committee counsel on October 25, 2010, pursuant to Committee Rule 23(f)(1) as evidence intended to be used against the respondent in the adjudicatory hearing.⁴ This objection is overruled.

¹ Committee Rule 23(i)(2).

² *Id.*

³ Under Committee rules, nonpartisan Committee staff are tasked with proving the counts alleged in a Statement of Alleged Violation. The Committee counsel assigned to this matter are C. Morgan Kim, Stacey Sovereign, Tom Rust, and Sherja Clarke (hereinafter "Committee counsel").

⁴ Respondent's Objections to Committee Counsel's Rule 23(f)(1) Production (Respondent's Objections) at 2.

Respondent's counsel note that Committee counsel produced "well over 3,000 pages of documents" and argue that this "exceed[s] any reasonable amount of material that it could 'intend' to use in the six hours allotted to counsel" to present its case at the adjudicatory hearing.⁵ Assuming that Committee counsel could not use all of that evidence within the six-hour time limit, respondent's counsel argue that it is not possible for Committee counsel to have a genuine intent to use the evidence in the adjudicatory hearing.⁶ Respondent's counsel thus request that "the Chair should direct Committee counsel to withdraw the submitted materials and redesignate only the material that it actually 'intends' to use at the adjudicatory hearing."⁷

However, it is important to bear in mind – as has been previously stated – that the ASC proceeding is a hearing, not a trial. Although the respondent obviously has due process rights under Committee and House rules, the same scope of protections and rules that guide the adversarial process in a criminal trial simply do not apply in the adjudicatory hearing context.

Accordingly, the parties are not limited to introducing exhibits via live witness testimony. As previous letters to the parties make clear, it is expected that once objections to evidence have been resolved in the pre-hearing process, copies of the parties' evidence will be provided to members of the ASC by November 19, 2010 – ten days before the start of the hearing – to ensure that members have adequate time to review the material so they can be prepared to evaluate witness testimony at the hearing and to ask questions, should they choose to do so.

Thus, it has been made clear to the parties that it is anticipated that they will each provide documentary evidence to the ASC that the members can review prior to the start of the hearing. It is not necessary that the parties introduce each exhibit during the hearing as would be the case in a trial setting.

Respondent's counsel argue that the scope of documents provided to respondent suggests that Committee counsel "intend[ed] to rely upon irrelevant and potentially prejudicial information; evidence to which, of course, Respondent's counsel would rightfully object."⁸ For example, they assert that any documentary evidence that "does not relate" to the three counts alleged in the Statement of Alleged Violation "is irrelevant and potentially prejudicial to Respondent."⁹

Respondent's counsel also acknowledge that certain related testimony "might be admissible to provide context" for other actions.¹⁰ In that regard, "[t]o the extent that specific facts relating to the phone call and meeting are relevant to the SAV, Respondent does not dispute the details relating to those events."¹¹

⁵ Per the October 12 scheduling letter, each party will be allowed six hours to present its case, exclusive of the time allotted for opening and closing arguments. Respondent's Objections at 1, 2-3.

⁶ Respondent's Objections at 3.

⁷ *Id.* at 7.

⁸ *Id.* at 3.

⁹ *Id.* at 7.

¹⁰ *Id.* at 5.

¹¹ *Id.*

Since Respondent's counsel have not yet filed such specific objections it is neither possible nor necessary to rule on any objections to specific pieces of evidence Committee counsel propose to use at this time. However, the parties are reminded that under Committee rules, "[a]ny relevant evidence shall be admissible unless the evidence is privileged under the precedents of the House of Representatives."¹² Any objections based on relevancy or privilege will be addressed at the appropriate time.

Under the schedule as originally announced in the October 12 scheduling letter, Committee counsel were required to produce materials to respondent's counsel by October 18, and respondent's counsel would have had 11 days to submit objections. The October 18 deadline for Committee counsel was subsequently stayed and then rescheduled for October 25, although the deadline for respondent's counsel to submit any corresponding objections was not also modified.

By this letter, I am notifying both parties that the deadline for respondent's counsel to provide Committee counsel with objections to Committee counsel's proposed exhibits or witnesses is rescheduled for Monday, November 1, 2010. Since respondent's counsel was provided with Committee counsel's proposed exhibits, witness list, and witness summaries on October 25, 2010, respondent's counsel will thus have seven days to review that material, then prepare and file any specific objections with the ASC. All other previously announced deadlines are unchanged and remain in effect for both parties.

Finally, in discussing the relevancy of proposed evidence, respondent's counsel states "[t]o the extent that specific facts relating to the phone call and meeting are relevant to the SAV, Respondent does not dispute the details relating to those events."¹³ As a reminder, the parties may, subject to subcommittee approval, enter into stipulations as to facts that are not in dispute.¹⁴ Committee counsel need not present any evidence regarding any fact stipulated or count that the respondent admits.¹⁵

However, since subcommittee approval is required for any stipulations, the parties must jointly submit any proposed stipulations to the adjudicatory subcommittee in advance. Per the October 22 letter regarding modifications to the schedule, the parties must submit any proposed stipulations to the ASC in writing by November 15, 2010.

Objection 2 -- witness list

Respondent's counsel also object to "Committee counsel's submission of 24 witnesses that it ostensibly 'intends to call,'"¹⁶ This objection is overruled.

¹² Committee Rule 23(i)(1).

¹³ Respondent's Objections at 5.

¹⁴ Committee Rule 23(i)(4).

¹⁵ Committee Rule 23(n).

¹⁶ Respondent's Objections at 7.

Respondent's counsel argue that in light of the "limited subject matter of the counts in the SAV and the six-hour time constraint, Committee counsel cannot actually 'intend' to call all 24 of these witnesses."¹⁷

As an initial matter, the list of witnesses provided by Committee counsel to respondent's counsel actually lists 21 witnesses; the document itself is 24 pages. More importantly, as respondent's counsel note elsewhere, "it is not the role of Respondent's counsel to advise Committee counsel on the presentation of its case."¹⁸ Nor is it the role of the Chair or the ASC to dictate which witnesses Committee counsel (or respondent's counsel) should call, or how to allocate the overall time allowed each party to each witness it opts to call at the adjudicatory hearing.

It is appropriate for the Chair to rule upon questions of admissibility or relevance of witness testimony, and such rulings are subject to appeal to the full ASC.¹⁹ However, no such question regarding admissibility or relevance of a particular witness proposed by Committee counsel is presented here.

Objection 3 -- witness summaries

Respondent's counsel object to the witness summaries provided by Committee counsel on the grounds that they "give no indication as to the actual content of the testimony, as contemplated by the 'summary' requirement."²⁰ This objection is overruled in part, and Committee counsel have until 5 p.m. on October 29, 2010, to cure the summaries with respect to two witnesses.

Under Committee rules, Committee counsel must provide to the respondent, among other materials, the names of the witnesses Committee counsel intend to call, as well as a "summary of their expected testimony" no less than 15 days before the start of the adjudicatory hearing.²¹

The summaries provided by Committee counsel for 19 of the 21 witnesses they intend to call provide a sufficient basis to comport with the requirement of Committee Rule 23(f)(1). However, the summaries for two witnesses are insufficient.

For Representative Maxine Waters, Committee counsel indicate that she may be called to "testify before the adjudicatory subcommittee regarding topics consistent with her testimony before the Office of Congressional Ethics on June 25, 2009, her testimony before the investigative subcommittee on December 16, 2009, and the press conference she held on August 13, 2010, including any materials presented or distributed at or in connection with the press conference."²² Similarly, the summary for Michael Grant indicates only that he "may be called

¹⁷ *Id.*

¹⁸ *Id.* at 6, n.2.

¹⁹ Committee Rule 23(f)(2).

²⁰ Respondent's Objections at 8.

²¹ Committee Rule 23(f)(1).

²² Committee Counsel Witness Summary, Representative Maxine Waters.

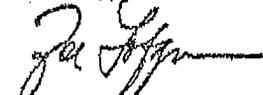
Mr. Stanley M. Brand and Mr. Andrew D. Herman
October 28, 2010
Page 5 of 5

to testify before the adjudicatory subcommittee regarding relevant topics consistent with his testimony before the investigative subcommittee on November 10, 2009."²³

Many of the other proposed witnesses identified by Committee counsel and for whom Committee counsel provided summaries of expected testimony also testified before the investigative subcommittee, but Committee counsel provided greater detail for those summaries than simply referring to "relevant topics" covered in their testimony. Committee counsel should also provide greater detail in the summaries for Representative Waters and Mr. Grant. Committee counsel are granted an opportunity to cure the summaries for these two witnesses, and have until 5 p.m. on October 29, 2010, to cure the summaries with respect to two witnesses and provide those summaries in writing.

For the aforementioned reasons, objections one and two raised by respondent's counsel in their October 27, 2010, filing in this matter, Respondent's Objections to Committee Counsel's Rule 23(f)(1) Production, are hereby overruled. Objection three, relating to witness summaries, is overruled in part, and Committee counsel are provided with additional time to cure witness summaries for Representative Maxine Waters and Michael Grant. Committee counsel is granted until 5 p.m. on October 29, 2010, to cure these two summaries and provide copies in writing.

Sincerely,



Zoe Lofgren
Chair

cc: Representative Jo Bonner, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct
C. Morgan Kim, Deputy Chief Counsel, Committee on Standards of Official Conduct

²³ Committee Counsel Witness Summary, Michael Grant.

EXHIBIT 16

11-15-2010

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
ADJUDICATORY SUBCOMMITTEE

In the Matter of
REPRESENTATIVE MAXINE WATERS,
Respondent.

COMMITTEE COUNSEL'S MOTION TO RECOMMEND RECOMMITAL OF THE
MATTER TO THE INVESTIGATIVE SUBCOMMITTEE

While Committee counsel was preparing a witness for the adjudicatory hearing in the matter of Representative Maxine Waters, that witness gave Committee counsel a new piece of evidence. A copy of this evidence is attached as Exhibit 1. The investigative subcommittee in this matter did not have access to this evidence. Committee counsel believes that this evidence may have had a material impact on the investigative subcommittee's investigation and the resulting statement of alleged violation that the investigative subcommittee transmitted to the full Committee. For this reason, Committee counsel moves that the adjudicatory subcommittee send this new evidence to the full Committee with a recommendation that the Committee recommit the matter to the investigative subcommittee.

Respectfully submitted,

C. Morgan Kim, Deputy Chief Counsel
Tom Rust, Counsel
Stacey Sovereign, Counsel
Sheria Clarke, Counsel
Counsel to the Committee on Standards of Official Conduct

Copies to:

Stanley M. Brand, Esq.
Andrew Herman, Esq.
Brand Law Group
923 Fifteenth Street, N.W.
Washington, D.C. 20005
Counsel to Respondent Maxine Waters

Exhibit 1

Hughes, John

From: Roslanowick, Jeanne
Sent: Sunday, September 28, 2008 2:00 PM
To: Moore, Mikael
Cc: Maurano, Rick; Hughes, John; Stewart, Lawranne
Subject: RE: Bailout

Mikael -- Leg counsel still working on most recent draft - no final doc yet - RM and/or JH will report on progress

J

From: Moore, Mikael
Sent: Sunday, September 28, 2008 1:56 PM
To: Roslanowick, Jeanne; Stewart, Lawranne; Laster, Gail; Maurano, Rick
Subject: Bailout

All,

Thank you for all of your work on this bill. I know that you have been pulled in a thousand different directions, and want to acknowledge the extreme responsiveness of the FSC staff to the issues raised by Rep. Waters, especially by Gall, John, Rick and Lawranne. With that being said, I am a little concerned that I have not seen a draft for a couple of days and would like to know the status of the provisions that we have been working on. Rep. Waters is under the explicit impression that the contracting language, the small bank language and systemic loan modification approach language is included in the bill. If there is any material or technical changes to the language as last agreed upon, please alert me as soon as possible so that Rep. Waters has an opportunity to weigh in. It would not be acceptable to receive a copy after it is final. Furthermore, as a senior member of the Committee and Subcommittee Chair, Rep. Waters **EXPECTS** to see the entire bill well before it is available for public consumption. As you can imagine, Members, press and constituents are extremely interested in her disposition towards the bill.

As you consider this request, I would like to flag what appear to be two drafting errors, one in the small bank language and one from the contracting language....

In the draft small bank language, the word "financial" was left out before the word "assistance." Please include "financial" before assistance.

CSOC.WAT.HUGHES.001

CSOC.WAT.005997

COE.WAT.OC.018874

In the draft language provided, page 21 line to the word "practicable" was substituted for "possible." Please make sure that the final draft, in fact includes the word "possible"..... Thank you.

Mikael Moore
Chief Of Staff
Congresswoman Maxine Waters (CA-35)
o: 202-225-7777
c. 202-821-7777
f: 202-225-7777

EXHIBIT 17

11-16-2010

UNITED STATES HOUSE ON REPRESENTATIVES
Committee on Standards of Official Conduct
Adjudicatory Subcommittee

In the Matter of :
:
REPRESENTATIVE :
:
MAXINE WATERS :
:

RESPONDENT'S RESPONSE TO COMMITTEE COUNSEL'S MOTION TO
RECOMMEND RECOMMITAL OF THE MATTER
TO THE INVESTIGATIVE SUBCOMMITTEE

On November 15, 2010, Committee counsel for the adjudicatory subcommittee (ASC) in the Matter of Representative Maxine Waters filed a Motion to Recommend Recommital of the Matter to the Investigative Subcommittee. Counsel premises its request on a "new piece of evidence" which "the investigative subcommittee in this matter did not have access to" and which "counsel believes . . . may have had a material impact on the investigative subcommittee's investigation and the resulting statement of alleged violation . . . transmitted to the full Committee," Recommital Motion at 1. Accordingly, counsel "moves that the adjudicatory subcommittee send this new evidence to the full Committee with a recommendation that the Committee recommit the matter to the investigative subcommittee." *Id.*

Committee counsel's filing is an explicit acknowledgement of Respondent's oft-stated assertion that Committee counsel cannot use the adjudicatory hearing process to expand the facts relevant to the SAV. Respondent also maintains that Committee counsel's filing is, at least, a tacit recognition that the facts presented in the current SAV are insufficient to establish the legal charges in the document. Accordingly, regardless of the Committee's decision on the underlying motion, any ruling must reflect the implications of Committee counsel's request.

Respondent respectfully opposes Committee counsel's motion. The motion should be denied because Committee counsel cites no Committee rule – nor can Respondent's counsel find any authority – permitting recommitment of the existing SAV to the investigative subcommittee for further activity and, potentially, amendment.

Committee rule 20(a) provides the only manner by which an SAV may be amended: “An investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its Statement of Alleged Violation anytime before the Statement of Alleged Violation is transmitted to the Committee.” (Emphasis added). Of course, because the investigative subcommittee has already transmitted the SAV to the Committee no amendment is permissible at this juncture.

Committee counsel's advocacy of this unauthorized remedy is extraordinary for several reasons. Respondent has maintained, essentially from the beginning of this process, that the investigative subcommittee's (ISC's) inquiry was flawed, at best. For example, the ISC summarily dismissed the assertions set forth in Respondent's Motion for a Bill of Particulars that the SAV did not contain sufficient factual proof to establish the alleged counts. Indeed, the ISC issued its blanket denial less than 24 hours after Respondent had filed her motion. The ISC, less than three days after the filing of Respondent's second pleading, and confidently reasserting that all three counts stated sufficient facts to establish a violation, also denied Respondent's Motion to Dismiss.

Remarkably, despite Respondent's repeated written and oral exhortations throughout this process, before yesterday Committee counsel had repeatedly denied that additional facts or documents were necessary to establish the counts charged. Instead, counsel argued either that the SAV was sufficient or that it did not establish limits on the relevance of material that could be presented to the ASC. *See, e.g.*, July 1, 2010, Order Denying Respondent's Motion

Respondent's Response to Committee Counsel's Motion to Recommend Recommitment
Page 2

for a Bill of Particulars (asserting that “[e]ach count of the [SAV] contains a plain and concise statement of the alleged facts of the violation”) and November 5, 2010, Committee Counsel’s Response to Respondent’s Objections to Committee Counsel’s 23(f)(1) Production at 10-12 (setting forth expansive reading of issues presented by SAV).

With the filing of its recommendal request, however, Committee counsel appears to acknowledge that documents, witness testimony and other evidence gathered after transmittal of the SAV cannot serve to satisfy counsel’s burden of proof on the current SAV. In Respondent’s view, Committee counsel’s request and the clear implications of that filing present the Committee with two options:

If Committee denies counsel’s motion, Respondent respectfully requests that it limit witnesses and evidence to the material offered during the investigative phase to establish the SAV. Indeed, counsel’s motion represents an admission that the ISC not only should not have moved forward with the SAV, but that it was hasty in its decision to do so. As an example of its flawed approach, despite the SAV’s focus on his actions as the prime mover in this matter and Committee counsel’s repeated emphasis on the importance of his actions, the ISC Members never questioned Respondent’s Chief of Staff on this matter nor did ISC counsel designate him as a witness before the ASC. Nor does Committee counsel explain why it could not have obtained “Exhibit 1” to its current motion prior to transmittal of the SAV or why it waited until two weeks prior to the start of the adjudicatory hearing to submit a motion relying on a document that it had in its possession for weeks, if not months. In sum, Committee counsel’s eleventh-hour conversion casts doubt on its previous claims regarding this matter and confirms Respondent’s consistent, repeated assertions regarding the flaws in the process.

Now that Committee counsel has acknowledged these significant deficiencies in the

SAV, this Committee cannot simply proceed on the expansive path formerly advocated by Committee counsel. The only permissible *adjudicatory* solution would be to move forward with a hearing that reflects the limited scope of the factual assertions and legal issues in the SAV, an approach for which Respondent has repeatedly advocated.

If, alternatively, the Committee elects to grant the relief requested by Committee counsel, the only manner authorized by rule to accomplish that request would be for the adjudicatory subcommittee to dismiss the current SAV as "not proved." See Committee Rule 23(o) ("A count that is not proved shall be considered as dismissed by the subcommittee.").

Although not strictly relevant to the motion before the Committee, Respondent notes the Chair's statement yesterday in the Rangel Matter that because the process has been ongoing for two years and because Representative Rangel's counsel withdrew more than a month ago, he had ample time to review and comment on the proposed matters. That rationale applies to this matter with similar force. Here, the ISC clearly rushed to judgment, ignoring Respondent's repeated requests that it acknowledge and conform to applicable House rules. Whether such actions were taken in an attempt to force Respondent into a hasty settlement before publication of an SAV or were simply the product of legal error, Committee counsel has finally acknowledged the defects in the SAV. Given the aforementioned, it is ironic that on the eve of the hearing in this matter Committee counsel now asks for more time to complete its work.

In sum, Respondent opposes Committee counsel's Motion to Recommend Recommitment of the Matter to the Investigative Subcommittee. However, whether the Committee chooses to allow counsel to abandon the current SAV or orders counsel to proceed with its offer of proof, the Committee must mandate that counsel comply with all relevant Committee rules. While such action cannot cure the significant legal and procedure

defects that have occurred up to this point, *see, e.g.*, Respondent's November 8, 2010, filing, it would at least be an initial step toward providing Respondent with a fair and impartial adjudicatory hearing.

Respectfully submitted this 16th day of November, 2010,

A handwritten signature in black ink, appearing to read 'SMB', with a long horizontal flourish extending to the right.

Stanley M. Brand
Andrew D. Herman
Brand Law Group, PC
923 15th Street, NW
Washington, DC 20005

Counsel for Representative Maxine Waters

CERTIFICATE OF SERVICE

The undersigned declares under penalties of perjury that on November 16, 2010, I hereby served a copy of the foregoing Response to Motion to Recommend Recommitment of the Matter to the Investigative Subcommittee, on Daniel J. Taylor, Counsel to the Chair, and Blake Chisam, Counsel, House Committee on Standards of Official Conduct:

A handwritten signature in black ink, appearing to read 'ADH', with a long horizontal flourish extending to the right.

Andrew D. Herman

EXHIBIT 18

ZOE LOFGREN, CALIFORNIA
CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS
U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, DC 20515-6328
November 17, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER
K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCALL, TEXAS
KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER
SUITE HT-2, THE CAPITOL
(202) 226-7109

CONFIDENTIAL

Mr. Stanley M. Brand, Esq.
Mr. Andrew D. Herman, Esq.
Brand Law Group, P.C.
923 15th Street, N.W.
Washington, DC 20005

Ms. C. Morgan Kim
Deputy Chief Counsel
Committee on Standards of Official Conduct
Suite HT-2, The Capitol
Washington, DC 20515

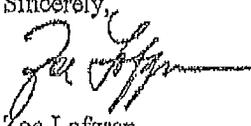
Re: In the Matter of Representative Maxine Waters

Dear Messrs. Brand and Herman and Ms. Kim:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Maxine Waters, I am writing with regard to the schedule in this matter.

The October 12, 2010, scheduling letter in this matter notified the parties of the possibility that a pre-hearing conference, if necessary, would be held at 1:00 p.m. on November 18, 2010, to resolve outstanding pre-hearing issues. The parties were also advised by letter on October 20, 2010, that the parties would be notified as to whether a pre-hearing conference would be held on that date when it became clear, based on other pre-hearing activity, whether such a meeting would be necessary.

In light of various pending motions in this matter, I have determined that a pre-hearing conference with the ASC and the parties is not appropriate at this time. As stated previously, both parties will be provided notice of rulings on the pending motions, as well as any rescheduled dates or deadlines in this matter. Should any further changes to the schedule be required, both parties will be notified.

Sincerely,

Zoe Lofgren
Chair

cc: Representative Jo Bonner, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

EXHIBIT 19

ZOE LOFGREN, CALIFORNIA
CHAIR

BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT

DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR

R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

JO BONNH, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. McCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE RT-2, THE CAPITOL
(202) 226-7108

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

November 19, 2010

MEMBER'S PERSONAL ATTENTION

The Honorable Maxine Waters
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, DC 20515

Dear Colleague:

The Committee on Standards of Official Conduct (Committee) has voted to recommit the matter of allegations regarding your conduct to an investigative subcommittee to conduct further proceedings due to materials discovered that may have had an effect on the investigative subcommittee's transmittal to the Committee.

As a result, the adjudicatory subcommittee no longer has jurisdiction over this matter and the adjudicatory hearing previously scheduled for November 29, 2010, will not be held.

Pursuant to the Committee's actions, the investigative subcommittee shall have jurisdiction to determine whether you violated the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to your conduct in the performance of your duties or the discharge of your responsibilities, with respect to your alleged communications and activities with, or on behalf of, the National Bankers Association or OneUnited Bank, a bank in which your husband owned stock and previously served on the board of directors, and the benefit, if any, you or your husband received as a result.

Representative Kathy Castor will serve as Chair of the investigative subcommittee, and Representative K. Michael Conaway will serve as its Ranking Republican Member. The other two members of the subcommittee are Representative Keith Ellison and Representative Marsha Blackburn.

Enclosed are copies of the House Rules and Committee Rules for the 111th Congress. By this letter, we also remind you of your right, pursuant to Committee Rule 26(a), to be represented by counsel provided at your own expense.

COE.WAT.OC.018888

The Honorable Maxine Waters
November 19, 2010
Page 2 of 2

If you or your counsel have any questions, please do not hesitate to contact the Committee's Chief Counsel and Staff Director, R. Blake Chisam.

Sincerely,



Zoe Lofgren
Chair



Jo Bonner
Ranking Republican Member

ZL/IB:tar

Enclosures: Rules of the House of Representatives
Rules of the Committee on Standards of Official Conduct

cc: Mr. Andrew Herman

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Confidentiality Agreement") is entered into by Representative Maxine Waters ("Respondent"), and Stan Brand, for himself and for and on behalf of any and all personnel from the law firm Brand Law Group (the "Firm"), including any and all attorneys, support personnel, and other employees (individually and collectively "Respondent's Counsel"), on this 28 day of May, 2010.

WHEREAS, an investigative subcommittee ("Investigative Subcommittee") of the Committee on Standards of Official Conduct (the "Committee") has been investigating certain allegations relating to Respondent pursuant to Rules 17A, 18, and 19 of the Rules of the Committee (as amended June 9, 2009) (the "Committee Rules");

WHEREAS, the Investigative Subcommittee has scheduled a vote on a Statement of Alleged Violation ("SAV") because it has "determine[d] that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member . . . has occurred" (*see* Committee Rule 19(f));

WHEREAS, pursuant to Committee Rules 25 and 26(c), the Investigative Subcommittee seeks to provide Respondent and Respondent's Counsel with a copy of the Statement of Alleged Violation it intends to adopt, together with (i) all evidence it intends to use to prove those charges which it intends to adopt, including, to the extent such evidence exists, documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, and (ii) any exculpatory information (i) and (ii) collectively referred to herein as the "Evidence";

WHEREAS, pursuant to Committee Rule 26(f), the Investigative Subcommittee may not make any such Evidence available to Respondent or to Respondent's Counsel unless and until Respondent and Respondent's Counsel agree in writing to comply with Committee Rule 26(f) and maintain the confidentiality of such Evidence until such time as is specified in the Rule; and

WHEREAS, Respondent and Respondent's Counsel understand and agree that, to permit the Investigative Subcommittee to make the Evidence available to either or both of them, both Respondent and Respondent's Counsel must agree in writing to comply with Committee Rule 26(f) and to maintain the confidentiality of the Evidence until such time as is provided in the Rule;

NOW THEREFORE, Respondent and Respondent's Counsel hereby agree as follows:

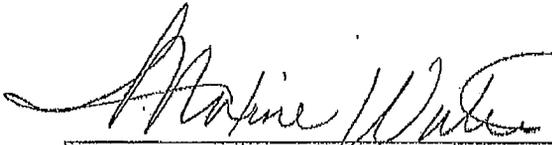
1. *Definition of Confidential Information:* As used in this Confidentiality Agreement, "Confidential Information" shall mean all Evidence made available to Respondent and/or to Respondent's Counsel, together with any and all information, facts, conclusions, or

inferences in any way based on, drawn, derived, or stemming from, or related to the Evidence, whether oral, written, electronic, or in any other medium, including, but not limited to, memoranda, reports, summaries, other documents, or emails. "Confidential Information" shall also include any and all Evidence provided to Respondent and/ or Respondent's Counsel after the date hereof, whether pursuant to Committee Rules 25 or 26(e) or otherwise.

2. *Protection of Confidential Information:* Respondent and Respondent's Counsel shall maintain the confidentiality of the Confidential Information and not disclose it in any way, shape or form to anyone other than Respondent and/or Respondent's Counsel unless such person or persons is/are subject to this Confidentiality Agreement or to an agreement providing the same or substantially similar protection to the Confidential Information ("Other Confidentiality Agreements"), until the Disclosure Date set forth in Section 3 below.
3. *Disclosure Date:* Respondent and/or Respondent's Counsel may not disclose the Confidential Information to persons not subject to this Confidentiality Agreement or Other Confidentiality Agreements until (the "Disclosure Date");
 - a. Such time as a Statement of Alleged Violation is made public by the Committee if the Respondent has waived an adjudicatory hearing pursuant to Committee Rule 26(b); or
 - b. The commencement of an adjudicatory hearing if the Respondent has not waived an adjudicatory hearing.
4. *Respondent's Failure to Receive the Evidence:* The failure of Respondent and Respondent's Counsel to agree in writing to protect the confidentiality of the Confidential Information, and therefore their failure to receive the Evidence as permitted pursuant to Committee Rule 26(f), shall not preclude a vote on a Statement of Alleged Violation at the end of the ten-day period referenced in Committee Rule 26(a).
5. *Limitations:* The obligations of Respondent and Respondent's Counsel hereunder shall not apply to such portions of the Confidential Information that were in the possession of the Respondent and/or Respondent's Counsel prior to the date hereof and which were not acquired or obtained from the Investigative Subcommittee or the Committee. Prior to disclosing any such information to any party not subject to this Confidentiality Agreement or Other Confidentiality Agreements, Respondent and/or Respondent's Counsel hereby agree to notify the Committee in writing at least five (5) days prior to any disclosure and, with that notice, to provide evidence of his or their possession of such information prior to the date hereof.

6. *Notices:* In the event of an inadvertent disclosure of the Evidence, Respondent or Respondent's Counsel shall notify the Committee of such disclosure within five (5) days of such disclosure.
7. *Remedies:* Respondent and Respondent's Counsel understand and agree that if the Investigative Subcommittee determines that Respondent and/or Respondent's Counsel may have violated this Confidentiality Agreement, the Investigative Subcommittee may avail itself of any remedy provided in the Committee Rules, including, but not limited to, Committee Rules 19(o)(3) and 26(m).
8. *Validity of Agreement; Counterparts:* This Confidentiality Agreement shall not come into force and effect unless and until signed both by Respondent and Respondent's Counsel. The effective date shall be the later of the date on which either Respondent or Respondent's Counsel executes the Confidentiality Agreement. All executed copies of this Confidentiality Agreement are duplicate originals, equally admissible as evidence. The Confidentiality Agreement may be executed in counterparts, and such counterparts taken together shall be deemed the Confidentiality Agreement. A facsimile copy of a signature of a party hereto shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, and each intending to be legally bound, Respondent and Respondent's Counsel have executed this Confidentiality Agreement on the dates indicated below.



The Honorable Maxine Waters

Date: 5/28, 2010

Stan Brand, Esq.
Brand Law Group

Date: _____, 2010

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Confidentiality Agreement") is entered into by Representative Maxine Waters ("Respondent"), and Stan Brand, for himself and for and on behalf of any and all personnel from the law firm Brand Law Group (the "Firm"), including any and all attorneys, support personnel, and other employees (individually and collectively "Respondent's Counsel"), on this 28th day of MAY, 2010.

WHEREAS, an investigative subcommittee ("Investigative Subcommittee") of the Committee on Standards of Official Conduct (the "Committee") has been investigating certain allegations relating to Respondent pursuant to Rules 17A, 18, and 19 of the Rules of the Committee (as amended June 9, 2009) (the "Committee Rules");

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WHEREAS, Respondent and Respondent's Counsel understand and agree that, to permit the Investigative Subcommittee to make the Evidence available to either or both of them, both Respondent and Respondent's Counsel must agree in writing to comply with Committee Rule 26(f) and to maintain the confidentiality of the Evidence until such time as is provided in the Rule;

NOW THEREFORE, Respondent and Respondent's Counsel hereby agree as follows:

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inferences in any way based on, drawn, derived, or stemming from, or related to the Evidence, whether oral, written, electronic, or in any other medium, including, but not limited to, memoranda, reports, summaries, other documents, or emails. "Confidential Information" shall also include any and all Evidence provided to Respondent and/or Respondent's Counsel after the date hereof, whether pursuant to Committee Rules 25 or 26(e) or otherwise.

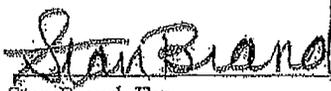
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 - a. Such time as a Statement of Alleged Violation is made public by the Committee if the Respondent has waived an adjudicatory hearing pursuant to Committee Rule 26(b); or
 - b. The commencement of an adjudicatory hearing if the Respondent has not waived an adjudicatory hearing;
4. *Respondent's Failure to Receive the Evidence:* The failure of Respondent and Respondent's Counsel to agree in writing to protect the confidentiality of the Confidential Information, and therefore their failure to receive the Evidence as permitted pursuant to Committee Rule 26(f), shall not preclude a vote on a Statement of Alleged Violation at the end of the ten-day period referenced in Committee Rule 26(c).
5. *Limitations:* The obligations of Respondent and Respondent's Counsel hereunder shall not apply to such portions of the Confidential Information that were in the possession of the Respondent and/or Respondent's Counsel prior to the date hereof and which were not acquired or obtained from the Investigative Subcommittee or the Committee. Prior to disclosing any such information to any party not subject to this Confidentiality Agreement or Other Confidentiality Agreements, Respondent and/or Respondent's Counsel hereby agree to notify the Committee in writing at least five (5) days prior to any disclosure and, with that notice, to provide evidence of his or their possession of such information prior to the date hereof.

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IN WITNESS WHEREOF, and each intending to be legally bound, Respondent and Respondent's Counsel have executed this Confidentiality Agreement on the dates indicated below.

The Honorable Maxine Waters

Date: _____, 2010



Stan Brand, Esq.
Brand Law Group

Date: MAY 28, 2010